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Source of Community Leaders Oral History Series

H. Howard Hassard

THE CALIFORNIA MEDICAL ASSOCIATION, MEDICAL INSURANCE, AND THE LAW, 1935-1992

With Introductions by
Peter N. Grant
and
David E. Willett

Interviews Conducted by
Malca Chall
1992, 1993

Underwritten by the Endowment of the Class of '31
University of California, Berkeley

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Howard Hassard, circa 1970

[illegible]

San Francisco Chronicle, November 24, 1999

HASSARD, Howard 'Hap' — In San Francisco, October 20, 1999 at age 89. Husband of the late Dorothy J. Hassard. Born in Oakland, he graduated from U.C Berkeley in 1931 and Boalt Hall Law School in 1934. He practiced law in San Francisco his entire career with the law firm which is now Hassard Bonnington. Mr. Hassard was instrumental in the founding of Blue Shield of California in 1939; wrote the bill which resulted in the establishment of the first eye bank in the country; and conceived of the 'good samaritan' statutes that protect physicians who provide on-the-scene care. He was general counsel of Blue Shield of California since 1939; general counsel of the California Medical Association from 1945 to 1987 and its Executive Director from 1958 to 1967; general counsel of the National Association of Blue Shield Plans from 1947 to 1981; general counsel of Swinerton & Walberg Co. since the 1930's and a director since 1960. He was a member of the Bohemian and Olympic Clubs. He is survived by son James; daughters Elizabeth Silver and Kathryn Gaehwiler; grandchildren John and Andrew Hassard, Silas and Nina Geneson, Rebecca, Matthew and Ann Silver; and two great-grandchildren.

A memorial service will be held November 9 at 5:00 PM at the Bohemian Club, 600 Taylor Street, SF. Donations may be made to the Class of 1931 Endowment Fund - Friends of the Bancroft Library, 486 Bancroft Library #6000 Berkeley, CA 94720.

Cataloging Information

HASSARD, H. Howard (b. 1910) Attorney

The California Medical Association, Medical Insurance, and the Law, 1935-1992, 1993, xvi, 228 pp.

Childhood, San Leandro, CA; UC Berkeley, 1931, Boalt Hall School of Law, 1934; beginning law practice with Hartley F. Peart, San Francisco, 1934, eventual head of firm Hassard, Bonnington, Rogers & Huber; counsel for California Medical Association since 1935; drafting California Physicians Service Bill, 1937-1938; Blue Shield/Blue Cross 1930s-1992; landmark medical malpractice lawsuits; California laws following malpractice crisis, 1975; controversy over group health and closed panel medical practice, 1943-1959; Medicare, Medicaid (Medi-Cal); discusses significant changes in medical and legal professions and technologies, lobbying, future of comprehensive health care plans, workmen's compensation, medical quality assurance, Swinerton & Walberg Co. and changing aspects of major construction industry, 1946-1992.

Introductions by David E. Willett, Hassard, Bonnington, Rogers & Huber; Peter N. Grant, Davis Wright & Tremaine.

Interviewed, 1992, 1993 by Malca Chall for the University of California Source of Community Leaders Oral History Series. The Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

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PREFACE

On the occasion of the 50th anniversary of our graduation from the University of California at Berkeley, the Class of 1931 made the decision to present its alma mater with an endowment for an oral history series to be titled "The University of California, Source of Community Leaders." The Class of 1931 Oral History Endowment provides a permanent source of funding for an ongoing series of interviews by the Regional Oral History Office of The Bancroft Library.

The commitment of the endowment is to carry out interviews with persons related to the University who have made outstanding contributions to the community, by which is meant the state or the nation, or to a particular field of endeavor. The memoirists, selected by a committee set up by the class, are to come from Cal alumni, faculty, and administrators. The men and women chosen will comprise an historic honor list in the rolls of the University.

To have the ability to make a major educational endowment is a privilege enjoyed by only a few individuals. Where a group joins together in a spirit of gratitude and admiration for their alma mater, dedicating their gift to one cause, they can affect the history of that institution greatly.

The oral histories illustrate the strength and skills the University of California has given to its sons and daughters, and the diversity of ways that they have passed those gifts on to the wider community. We envision a lengthening list of University-inspired community leaders whose accounts, preserved in this University of California, Source of Community Leaders Series, will serve to guide students and scholars in the decades to come.

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INTRODUCTION--by Peter N. Grant

I became a health care attorney in California in 1979. In 1984, I determined to return to my graduate studies in the Department of History at Harvard University in order to complete my Ph.D. dissertation. I chose as my topic a history of California's health care system from around the time of statehood in 1850 to 1939 when, following the Great Depression, California's three Blue Cross plans and California Physician Services, later known as Blue Shield, were formed.

Both as a health care attorney and a historian, I soon learned that the most influential health care attorney in California from the mid-1930s to the 1970s, and the person who knew the most about the organization of medical practice was Howard (Hap) Hassard. Many times between 1984 and 1988 Mr. Hassard took time to speak with me about the history of California's health care system. During those discussions, I learned a great deal about Mr. Hassard.

Hap graduated from law school in the early 1930s during the depths of the Depression. He was lucky to obtain employment with Hartley F. Peart, Esq. who had served as legal counsel to the Medical Society of the State of California since 1915. Almost immediately, Hap was forced to take a lead role in dealing with the house of delegates of the Medical Society in their support for compulsory health insurance bill. In fact, within the first months of his practice, Hap drafted a bill which was introduced with the support of the State Medical Society. While the bill was ultimately defeated, this is one of the few times that the State and Medical Society had supported compulsory health insurance. Hap's adept representation of the Medical Society during these crucial months also won him much praise and respect from the leadership of organized medicine in California.

By the late 1930s it became evident that any compulsory health insurance bill which had any chance of passing the California legislature could not be supported by organized medicine. Accordingly, Hap took the lead role in forming the first statewide Blue Shield plan, California Physician Services, in 1939. Subsequently, Hap was to become special legal counsel to the National Blue Shield Association.

Hap's leadership role in California's health system continued well into the 1970s as a result of the status as general counsel of the California Medical Association and California Blue Shield. His influence was not only felt in the way in which medical practice was organized in California, but also in the way in which the field of medical malpractice and tort reform developed.

As President of the California Society for Healthcare Attorneys, I recently asked Hap to speak at the Society's 1993 Annual Meeting on the topic of "Health Care Law: 1935 and 1993". Hap's reflections on his experiences helped all of us to put the current debate on health care reform in perspective. The standing ovation that Hap received from the assembled health care attorneys is reflective of the admiration and respect which he universally receives from the generations of health care attorneys in California who have followed in his footsteps.

Peter N. Grant, J.D., Ph.D.
Partner
Davis Wright Tremaine

San Francisco, California
April 26, 1993

INTRODUCTION--by David E. Willett

A lawyer's personal impact on the workings of society infrequently extends beyond clients served and their opposite numbers. Even lawyers blessed with brilliance, longevity and a passion for work may leave no greater mark. Just a few individuals rise above their fellows. As practitioners or as jurists, these lawyers shape both the law and social response. Their efforts significantly affect the conduct of human affairs in their time and long afterwards.

Howard "Hap" Hassard is one of those lawyers. Fresh from law school in 1934, his intellect, his understanding of human needs and behavior, and a prodigious appetite for hard work came to the attention of medical leadership in California. They accepted him as their lawyer and counsellor, even before his 29th birthday, and Howard Hassard began representing the medical profession. Identified with the California Medical Association, as General Counsel and occasionally as Executive Director, his advice was sought by physicians throughout the country. Howard Hassard presided at the birth of Blue Shield of California, one of the first prepaid health care service plans in the nation, and became a leader in a fledgling field. On those occasions when health care became a political football, Howard Hassard marshalled both the troops and the arguments, winning successive battles until significant legislative change could be justified. He remains a participant, watching from the hill above the battleground, accurately predicting and frequently influencing the course of events.

Fiercely loyal to his clients, Hap has never thought it his duty to merely advance their short term interests without concern for the consequences. Believing the practice of law to be a profession, obligated to serve the ultimate interests of the public, Hap has insisted that his clients also respect the public's welfare. Medicine's similar dedication made him that profession's natural partner. Blue ribbon clients in construction and other fields also sought him out. Beyond stunning intellect, his genius reflects unsurpassed analytical skills and shrewd insight into human needs and likely reactions. His premise that a client is not well served when the public is disadvantaged is as important as the energy and professional abilities he brings to problem solving.

Not only his adversaries find him formidable. Howard Hassard moves very rapidly. His brilliance and mental agility sometimes intimidate juniors and even peers, unaware that he is also surprisingly shy. He is a teacher, as much as a counsellor. Howard Hassard's story, as told here, provides rare insight into the development of the health system. It also describes how one individual can influence the course of events.

David E. Willett, partner
Hassard, Bonnington, Rogers & Huber

San Francisco
May 11, 1993

INTERVIEW HISTORY--by Malca Chall

This oral history of H. Howard "Hap" Hassard documents his role in the field of law and medicine over sixty years. Because of his significant state and national reputation he was an appropriate choice for the Class of 1931's Source of Community Leaders Oral History Series.

Despite the amusing connotation, there has never been anything haphazard in the life or career of "Hap" Hassard. Growing up in rural San Leandro, California, the bright youngster found school boring, but the local Carnegie Library replete with opportunities for exciting intellectual adventures. He also understood that his family expected him, unquestionably, to attend college at UC Berkeley.

There he majored in history, considering a career as a college professor. But, when he graduated in 1931, during the depths of the Great Depression, he could not contemplate such a long-range goal. So, on the basis of a course in jurisprudence which he had enjoyed, and the fact that he planned soon to marry classmate Dorothy Jones, he enrolled in law school and "liked it from day one."

Throughout his three years at the Boalt Hall School of Law, he worked at an outside job four to six hours a day, attended classes, earned top grades, and for two years, served on the staff of the Law Review. Yet, every night he had to prepare, from memory, outlines of daily class lectures because he could not, with his left hand, comfortably take notes on the right-handed arm chair--the basic furniture of all classrooms then and now. To this day, Mr. Hassard claims he never takes notes. Among his peers, his memory is legendary.

In 1934, a law degree did not automatically assure one of a position. "In that year law school graduates did not make a decision," about where to practice law, "they begged." Fortunately, "Hap" Hassard soon found his place with the attorney Hartley Peart who had an opening for an attorney, one he had "every ten years or so." Mr. Peart, a man of considerable social and political influence in San Francisco, had the California Medical Association among his clients. When, in 1935, the doctors voted in favor of government-sponsored health insurance (which later they revoked), this so infuriated Hartley Peart that he refused to deal with the CMA, and required Hassard to take his place. This started the young man on his career in health insurance and related issues. During 1937-1938, Mr. Hassard, Mr. Peart and two physicians drafted the California Physicians Service bill, a forerunner of Blue Shield.

For the next fifty-five years, Mr. Hassard helped draft or advise on bills related to health insurance, medical malpractice reform, workmen's compensation, mental health care, Medicare and Medicaid, and served on commissions relating to health insurance at federal and state levels. He has observed and participated in the struggles of the CMA and AMA to accept closed panel plans like Kaiser Permanente and Group Health of Puget Sound. He witnessed the first stages of Blue Shield and Blue Cross plans.

The subject of most of this oral history is medicine and the law. Much of the background was set by a previous interview with Mr. Hassard conducted, in 1985, by Miriam Stein to commemorate Mr. Hassard's fifty years of service to the CMA. This excellent oral history, Fifty Years in Law and Medicine is bound with this volume.

For the Class of 1931 series, Mr. Hassard and I agreed to fill in the years regarding medicine and the law which followed the earlier interview (1985-1992), and to include information on his personal life and the San Francisco law firm Hassard, Bonnington, Rogers & Huber. Some duplication has been unavoidable.

Between March 1992 and January 1993, we recorded thirteen interview hours in eight sessions in Mr. Hassard's office on the 34th floor of the 50 Fremont Street building in San Francisco where the law firm maintains two floors. His is a moderately sized wedge-shaped office with two picture windows facing the port, well-stocked antique bookcases along the walls, and the inevitable cartons of memoranda and other papers on the floor. Mr. Hassard sat in a sizeable black leather chair at a large well-polished wooden desk, both inherited from Mr. Peart. On the desk was a state-of-the-art dictaphone, a piece of technology, which only recently Mr. Hassard has deigned to use. The halls were so quiet we never felt compelled to shut the door. We discussed the striking changes in the technology of law and medicine between 1934 and 1993.

Preceding each session Mr. Hassard received a general outline of topics planned for the upcoming interview, which was always scheduled between 11-12:30. Soft-spoken, articulate, occasionally laughing or chuckling, he answered questions and carefully expanded on the background and ramifications of the complex issues being discussed. He also donated a few articles and some correspondence which have been placed in the volume where relevant.

Because the past is prologue, Mr. Hassard bases his vision of the future of medical practice and health insurance on his experience of sixty years in the field. While he understands the need for comprehensive health insurance, he doesn't see any smooth road ahead to obtaining it. Containing hospital costs, he claims is an impossible dream unless we put a brake on research into advanced technology, an unlikely prospect in the United States where we all want the latest and the best. Providing medical care for everyone at an affordable cost will, he thinks, be difficult particularly if the government becomes deeply involved as it has with Medicare and Medicaid. "Medicaid," he feels, "is a noble experiment that has failed." At the same time he deplores the corporate practice of medicine--stockholder-driven HMOs and the changing concept of medicine as a business rather than a profession.

Mr. Hassard returned the lightly edited transcript with a few corrections and additions. He later reviewed the final manuscript to ensure accuracy.

Members of the law firm staff generously helped in the preparation of this oral history. Always helpful and gracious, Diana Guensler, Mr. Hassard's secretary, made appointments and checked facts.

Important background information came through interviews with long-time associates of Mr. Hassard: Robert Huber, Joseph Rogers, Rick Zimmerman, and David Willett. Mr. Willett and San Francisco attorney Peter Grant, who met "Hap" Hassard while doing research for his dissertation, agreed to write introductions. Because Mr. Hassard's modesty is as legendary as his memory, both introductions add information missing from the oral history. About his career, all he would say was, "I don't like to see my name in the paper, and I don't like to blow my own horn. I enjoyed practicing law. I found it stimulating. So from that point of view, I consider myself very lucky. Now, as to accomplishments, that's for others to judge."

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. The office is under the direction of Willa K. Baum, and is an administrative division of The Bancroft Library of the University of California, Berkeley.

Malca Chall
Senior Editor

Regional Oral History Office
The Bancroft Library
University of California, Berkeley
22 September 1993

Regional Oral History Office
Room 486 The Bancroft Library

University of California
Berkeley, California 94720

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name Henry Howard Hassard

Date of birth March 10, 1910 Birthplace Oakland, Calif

Father's full name Henry Houston Hassard

Occupation Postal Clerk Birthplace San Francisco, Cal.

Mother's full name Amalia Duchrow Hassard

Occupation Housewife Birthplace San Francisco, Cal.

Your spouse Dorothy Jones Hassard

Occupation Housewife Birthplace San Mateo, Cal.

Your children James Cushing Hassard, Elizabeth H. Silver, Kathryn H. Gaehwiler

Where did you grow up? San Leandro, Cal.

Present community San Francisco

Education Fremont High School, Oakland, U. C., Berkeley - AB 1931, LL B. 1934

Occupation(s) Lawyer

Areas of expertise Civil Law

Other interests or activities Golf, hiking, travel

Organizations in which you are active Rotary, Bohemian Club, Calif State Bar

I FAMILY BACKGROUND AND EDUCATION

[Interview 1: March 24, 1992] ##[1]

Chall: Here is a list of the members of the Class of '31 who attended their sixtieth anniversary. You may want to refer to that in your discussion. Here we go. Well, this is, as you know, mainly about your background.

Hassard: Yes.

Chall: So, tell me first when and where you were born, and we'll get all that straightened out. 1910, I know was the date.

Hassard: Yes. Well, I was born in Oakland, California, March 10, 1910, and my full name is Henry Howard Hassard.

Chall: Henry Howard Hassard. You've probably had it misspelled more times than you can count.

Hassard: That's right.

Chall: How did you happen to be born in Oakland? Is that where your family was living at the time, your parents?

Hassard: Yes. Well, obviously, my mother was there [laughs] and my father. Yes, they were both there.

Chall: Both living in Oakland?

Hassard: In Oakland. And as best I can tell, the house in which they lived was located right in the center of the now MacArthur Freeway.

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[1] ## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

Chall: So that was your family home?

Hassard: Well, it was my parent's home at the time. I wouldn't say it was our family home; it was temporary.

Chall: Did you live there for a long time?

Hassard: No. Before I was two years of age, my parents moved to San Leandro. I lived in San Leandro from roughly 1912 until my second year at Berkeley, college, 1928.

Chall: Is that right? My, that was a real suburb in those days.

Hassard: It was a very small rural town.

Chall: Growing cherries.

Hassard: That's correct. We had cherries in our backyard.

Chall: Where in San Leandro did you live? On what street?

Hassard: We had two locations. The first location was on Knox Avenue, which was then a country lane about a quarter of a mile eastward of the then-boundary of San Leandro, the town. In 1918 we moved from there to Euclid Avenue, in the Broadmoor section of San Leandro, which is on the other side of town; it's closer to Oakland. My parents lived at Euclid Avenue until my father's retirement in 1935.

Chall: Where did your father work?

Hassard: He worked for the post office.

Chall: Was there a post office branch in San Leandro where he worked?

Hassard: Well, in those days, the post office in San Leandro was a branch of the Oakland post office.

Chall: And did he work in the branch?

Hassard: Yes.

Chall: So he didn't have to commute.

Hassard: No. That was one reason for him moving to San Leandro.

Elementary and High Schools

Chall: I take it you went to school, then, in San Leandro.

Hassard: I did.

Chall: What schools were there at that time?

Hassard: Well, the main grammar school was Lincoln Grammar School, which was the original. When I started school, they had just finished building two primary schools, one in the Broadmoor section, and one on the other side of town. The one on the east part of town was called McKinley, and the one in Broadmoor was called Washington. They both were sixth-grade schools; for the seventh and eight grade, we had to go to Lincoln. I started at Lincoln in 1916. Actually, McKinley wasn't finished until sometime early in 1917. After the first grade, I went to the second grade at McKinley. Then we moved from Knox Avenue to Broadmoor, and I started in the third grade at Washington. And then in the seventh and eighth grades at Lincoln. In those days they skipped children more than they do now, and I skipped--I think it was four or five grades.

Chall: Four or five grades!

Hassard: Yes. Well, I graduated when I was twelve.

Chall: From high school?

Hassard: No, from grammar school.

Chall: I see. And then went into--?

Hassard: In those days, students in San Leandro had a choice of either going to Hayward High School or Fremont High School in east Oakland. I chose Fremont High School for a very cogent reason. The streetcar fare from San Leandro to Hayward was double--I think it was twelve cents--whereas the streetcar fare from San Leandro to Melrose in Oakland, where Fremont is located, was six cents.

Chall: [laughter] Isn't that interesting. There couldn't have been that much difference in mileage.

Hassard: About the same, mileage was about the same. The schools were the same. Incidentally, when I attended Fremont High School in the mid-1920s, my recollection is that out of a student body of close to two thousand, there was one black boy. One. Otherwise, it was all white.

Chall: My, yes. And that would have been four years at Fremont. You stayed there for four years?

Hassard: Well, actually, no. It was three years. For the ninth grade I went to Lockwood Junior High School, which is in east Oakland, around Seventieth Avenue, and then sophomore, junior and senior year, to Fremont.

Chall: As I recall, San Leandro was one of the few school districts that had this seven and eight intermediate grades. Most had seven, eight and nine.

Hassard: Yes, it was a holdover from the past.

Chall: It took a long time before they changed.

Hassard: Yes.

Parents and Grandparents

Chall: Okay, that's interesting. Can you tell me a little bit about your father's background and your mother's? Were they born here?

Hassard: Well, my father was born in San Francisco in 1876. My mother was born in San Francisco in 1883. All four of my grandparents were born in Europe, and all four migrated to the United States around 1870. I have a record of my grandfather and grandmother's marriage in San Francisco at Holy Trinity Church, at the corner of Post and Powell, in 1872.

Chall: So those folks met here?

Hassard: No, actually my father's father and mother met on the boat coming from England to the United States; the Hassard family is English. My grandfather left England and came directly to San Francisco, and my grandmother left Ireland and came directly to San Francisco. They met on a boat coming over, and then they got married after they arrived here in San Francisco. My grandmother was a widow; her first husband was killed in action in India. He was in the British Army. She had one little infant child, my aunt Florence. And she and the infant child migrated to the United States, and met my grandfather on the boat.

Chall: All by themselves?

Hassard: All by themselves.

Chall: In the 1870s.

Hassard: It was 1871/72. They were married in '72 here in San Francisco.

Chall: What brought them directly to San Francisco?

Hassard: I haven't the slightest--

Chall: That's such a long way!

Hassard: I know it. The transcontinental railroad was a year old. I have no idea. My grandfather was very reticent about saying anything about his past. His father was the rector of Holy Trinity Church in Stockton-on-Forest, which is a suburb of York. He left there when he was in his late twenties. I not only do not know why he left, but my wife and I have visited England on a number of occasions in the last twenty years, and I've met various relatives, and none of them have any idea why he left. [laughter]

Chall: Did it seem he might have been that he might have been a black sheep of the family or something? [laughter]

Hassard: I have no idea.

Chall: No way to know. But he certainly did leave.

Hassard: He was well-educated; he was a Cambridge graduate, as was my great-grandfather, and a number of other ancestors.

Chall: Many of them in the Church?

Hassard: No, there are not too many. My great-grandfather and one or two others.

Chall: So when your grandfather arrived here, what kind of a living did he make in San Francisco, do you know?

Hassard: Well, this was all told to me by my mother when I was young. My father was like his father--

Chall: Reticent.

Hassard: He just didn't like to talk about family. My grandfather taught briefly at the College of California, which is now the University of California. This was when it was in Oakland. He worked for Mr. [Hubert Howe] Bancroft; I don't know in what capacity, or whether it was parttime or fulltime or what. Then he became employed by what is now Dun & Bradstreet, which was then Dun. He worked for Dun & Bradstreet the rest of his adult life, until he retired.

Chall: And lived in San Francisco?

Hassard: No, they moved from San Francisco shortly after my father was born, to a place in Oakland that's now a run-down area, but was then very, very respectable. The house was on the top of a hill, on East Twenty-Second Street, between Twenty-Second Avenue and Twenty-Third Avenue. The house was still there when I was a child, and I visited it a number of times. They had about two acres of land, including a barn, horses, stuff. It was an 1880s style house, with high ceilings and what not. It's long gone now.

Chall: Well, of course he was teaching in Oakland, so it would be a good place for him.

Hassard: Yes. But he didn't teach very long.

Chall: And was the Dun & Bradstreet office in Oakland?

Hassard: No, it was in San Francisco. He commuted to San Francisco for forty years or so, I guess.

Chall: What about your mother?

Hassard: My mother's father and mother both were born in Germany. My mother's father was born in Alsace; his name was Emile Duchrau. My mother's mother was born just outside Dusseldorf, in a suburb. I've been there, I forget the name of the town. Her name was Amelia Herder. They migrated to the United States I guess about 1870. They were married in Philadelphia, and my oldest aunt was born in Philadelphia, so they lived there for at least a year or two. Then they migrated from Philadelphia to San Francisco, and lived in the Mission District. I can see out the window where my mother was born in 1883. My mother's father was a tailor. And at some time they moved from San Francisco to Oakland, on Seventh Street, where the big red trains used to run years ago. My grandfather had a tailor shop.

I don't know very much about the history of my grandparents in Europe. I know very little about my mother's father, for the reason that my grandmother and grandfather divorced before I was born. My mother took her mother's side, and grew to dislike her father intensely, and as a result, I never met my mother's father. She would have nothing to do with him. My grandmother remarried, a Frenchman named Jeandrot, and they lived in Hayward. My grandmother passed away when I was a freshman in college, 1927 or '28. So I knew my grandmother.

Chall: And did you know your grandparents on your father's side, too?

Hassard: Well, my grandmother, no. She acquired a cancer, and she died about 1916 or '17, when I was six or seven. So my memory of her is very dim. I remember she was a very tiny lady. My grandfather lived until 1923, and yes, I saw him from time to time.

Chall: Was the family rather close? I mean, all the grandparents?

Hassard: Noooo.

Chall: You lived rather a long way off, too.

Hassard: Well, my grandfather and grandmother on my father's side--Hassard--including Aunt Florence, who was a half-sister, there were four girls and seven boys. I think two of the girls died in childhood, and one of the boys. But there were a flock of them.

Chall: Yes, so you had many uncles and many cousins.

Hassard: I had many uncles and many cousins, correct.

Chall: Are there many Hassards around?

Hassard: Not too many. They're scattered.

Chall: Do you have brothers and sisters?

Hassard: I had two brothers. One met an accidental death, he burned to death, in a terrible tragedy, when he was about fourteen years old. My other brother is still alive.

Chall: Were they younger?

Hassard: Younger.

Chall: You're the oldest?

Hassard: I was the oldest of the three. My brother Bob, who's still alive and lives in Rossmoor, was born four years after I was. My youngest brother, John, the one that had the tragic death, was born in 1919, when I was nine.

Chall: No sisters?

Hassard: No sisters. Just the two brothers.

Chall: Now your father, what kind of education did he have?

Hassard: Well, strangely enough--and this influenced my life tremendously--my father only went through the ninth grade. All of the children of my grandfather Hassard had limited educations, except one, one girl, who went through Cal, graduated from Berkeley. Which was very puzzling, because both my grandfather and grandmother were very well educated, both had college degrees.

Chall: Your grandmother had, too?

Hassard: Yes. She taught at Mills College for a while.

Chall: Is that right? Now this is the grandmother who came from Ireland.

Hassard: Yes.

Chall: She had been that well educated as a girl in Ireland.

Hassard: Yes, it was very rare.

Chall: Was she a Protestant?

Hassard: I have no idea. [laughs] In spite of the fact that my great-grandfather was a rector, I have no idea.

Chall: Well, it's interesting, because she came from Ireland.

Hassard: Yes. My mother also only had a grade school education, and from the time I was just a little infant, it was drilled into my head that I had to go to college.

Chall: By whom?

Hassard: Both.

Chall: By your parents?

Hassard: By my parents.

Chall: Not your grandparents.

Hassard: No, my parents. Because they didn't. Only one, my father's sister, Elizabeth--her nickname was Ninni--she graduated from Berkeley around the turn of the century, but I don't know exactly when. And she taught school.

Chall: It was maybe more difficult in those days.

Hassard: Well, she was one of the early women to graduate. And my Aunt Florence [McCarthy Stevens] ultimately became a lawyer, way late in life.

Chall: Is that right?

Hassard: Yes. Oh, she was a very talented person. I have a vivid memory of her. I have a distant cousin that's her grandson, who's rather well known, Richard Diebenkorn.

Chall: Oh, yes, the artist.

Hassard: Aunt Florence's daughter Dorothy married Richard Diebenkorn, Sr. My Aunt Florence really taught Dick Diebenkorn how to paint.

Chall: Your Aunt Florence was quite a woman.

Hassard: Oh, she was. She was.

Chall: How did she happen to teach him to paint? Did she paint herself?

Hassard: Yes. Oh, yes. She was a very talented lady.

Chall: She went to college--we're talking about your Aunt Florence.

Hassard: Yes, somewhere, I don't know where. Because apparently, I don't know the reason--apparently my grandfather didn't get along with Aunt Florence or something, and she was put out--

Chall: She was the step-daughter.

Hassard: Yes. And she was raised by another family, but very near where my grandparents lived, in east Oakland. So I don't know much about her schooling. She passed the bar when I was still in high school.

Chall: That's really quite an achievement. In those days you could work for an attorney and read the law.

Hassard: I think she did.

Chall: What kind of law did she practice, do you know?

Hassard: I don't think she practiced very much.

Chall: But she did paint.

Hassard: Yes.

Chall: Was that self-taught, or did she go to school to learn?

Hassard: I have no idea.

Chall: So what was Diebenkorn doing when she taught him to paint? Just wishing he could paint, or fooling around with it?

Hassard: Well, he was living with his grandmother [my Aunt Florence]. Richard Diebenkorn, Sr., the father of the present Richard Diebenkorn, was a very fine gentleman. He worked for a company that's out of business now; it was a big retailer in San Francisco. I'll think of the name in a moment. In any event, his job required him to travel a great deal, and his wife accompanied him. In those days, they traveled by train, it was before the days of the airplane. And so Aunt Florence (his grandmother) took care of their child from time to time, and after a while, he preferred to live there. She lived down the peninsula, in Woodside. That child is Richard, Jr. the artist.

Chall: So your father went into the post office. Was that primarily his career?

Hassard: It was. My father was a natural-born farmer. He loved the soil; he could grow anything. That's what he wanted to do. But I think things didn't work out right. He enlisted in the army when the Spanish-American War started. He and one of his brothers, his brother Jim, they both enlisted and they went to the Philippines. Their unit went over to Manila. After the war ended, he remained in Manila for two or three or four years, and he got a job with the local English language newspaper as a printer.

When he came back, he continued that occupation. In fact, at the time of the 1906 earthquake, he was living in Oakland with his parents, and at one time we had the commute book, with everything from April 18th still intact in the book. He was a printer in San Francisco, and somehow or another, the earthquake terminated the job. Then he went to work in the post office, and stayed there until his retirement. But he was unhappy; he basically wanted to raise flowers.

Chall: Could he do that as a hobby in your backyard?

Hassard: He did, yes. He raised all our vegetables and fruits. After his retirement he really had fun gardening. And then the last few years of his life he had a radio program.

Chall: Oh, really! About gardening?

Hassard: About gardening.

Chall: Where did he broadcast?

Hassard: San Jose, because after retirement, they settled in Los Altos.

Chall: Oh, they moved.

Hassard: Yes, to Los Altos. He had about two, two and one-half acres of land, and he cultivated every square inch.

Chall: Oh, good for him! So he really lived out his dream.

Hassard: The best part of his life was after his retirement. Then he was doing what he wanted to do.

Chall: But at least he had a job during the Depression.

Hassard: Yes, he did.

Chall: Which was important for you. Was it the expectation of your parents that all three of you boys would go to college?

Hassard: Absolutely, yes. My mother I could say had an obsession. I mean, it was a must! [chuckles]

Chall: And did your brother who lived go to college, Bob?

Hassard: Yes. He graduated from Berkeley. He was in the Class of '38, I think.

Growing Up in San Leandro

Chall: Well, while you were going to school in San Leandro, there were pretty wide open spaces to play around in.

Hassard: Yes.

Chall: What did you like to do while you were not in school?

Hassard: I liked to play baseball. [laughs]

Chall: Where did you play it, on the schoolgrounds or in the fields?

Hassard: Both.

Chall: Were you a sports fan in a way?

Hassard: I guess so. It was a long time ago.

Chall: What about your friends? Did you make many friends that you went all through school with?

Hassard: Not too many. At the time that I was in grade school, from 1916 to 1922, I would guess that 90 percent of the students were of Portuguese ancestry, a few Spanish, and about 10 percent were non-Portuguese and non-Spanish. The Portuguese kids were all right, but they were very clannish. They stuck to themselves pretty much. I was allowed to play on the baseball team while I was at Lincoln. I was the smallest, littlest kid on the team, but I could play pretty well, and they accepted me for that, but not socially. So the number of youngsters that I knew very well were few and far between, because there weren't very many of them.

I had three little boys that I was very friendly with. One was Carol Weaver, whose father was the president of the local bank. The other was Jack Herr, whose father worked for Proctor and Gamble. It was a big company. It's still around. And the third was Gordon Phelps, whose father was deceased; his mother was raising him. And those were the three that I remember most. I knew others, of course.

Chall: Was there a church in the area where the so-called Anglos met?

Hassard: Yes. Of course there was a Catholic church, that was the biggest church in town. And there was a Presbyterian church. There may have been one of the other Protestant churches--I doubt it--but the Presbyterian church attracted me because it had a gymnasium, and we could play basketball. So I went to the Presbyterian. church.

Chall: But did your parents--?

Hassard: No.

Chall: Your parents weren't interested in church as such.

Hassard: No. No. My father particularly, because when he was growing up, his father--my grandfather--retained his English heritage, and remember, my great-grandfather was a rector. So every Sunday they had to go to church, come rain or shine. And the only Episcopal church in Oakland was located in downtown Oakland, so they had to take a horse and buggy, drive from east Twenty-Second Street to the church. And it was my father, being the oldest son, who had to saddle--I don't know the horse language [laughter] but he had to get the horse and buggy ready. So he had to get up at the crack of dawn or earlier to get the horse all set, and then drive my grandfather and grandmother to the church.

Chall: I see. So he'd had it.

Hassard: He'd had it, that's right. [laughter] And he expressed himself.

Chall: And your mother didn't--?

Hassard: No, my mother's parents were not church-goers, particularly. They were Protestant, I think.

Chall: So that wasn't a problem. It doesn't come up in your life?

Hassard: No. I was baptized in the Episcopal church in Oakland. My father at least did that. [laughter]

Chall: Well, your grandfather was still alive. [laughter]

Hassard: That's precisely the--I think that's the reason.

Chall: What did your parents do for a sort of social life?

Hassard: That's hard to say. My father worked in the garden, and he did not socialize particularly. My mother belonged to the local PTA and other women's clubs. She mingled in that fashion, and that was about it.

Chall: What about your classes, the teachers, and what you might have enjoyed most in school. What was school like with sort of a mix of--well, ethnic groups, in a way.

Hassard: Well, it was about what you'd expect with a mix of ethnic groups. Few of the Portuguese children were bright. Most of them, bright or otherwise, did not like school, and therefore did poorly. My grade school years are somewhat vague now, but at an early age I enjoyed reading, and the San Leandro Public Library was available. By the time I was, say, ten or eleven, I would go to the library after school, take out a book, read it through that night, return it the next day, and then take another book.

Chall: Oh, you must have been a joy to the librarian.

Hassard: [laughs] Oh, I read everything.

Chall: Ten or eleven was pretty young.

Hassard: Yes, there was difficulty. I read some of Dickens's works when I was maybe eleven or so, and I don't think I got out of them what I should have. I loved Tale of Two Cities, but--.

Chall: David Copperfield?

Hassard: David Copperfield was really a little heavy. [laughter] I read all-- But as a net result, school was kind of boring. I guess that's why I got skipped so much. It was easy.

Chall: You probably seemed brighter. You may have been.

Hassard: Yes. The only thing that I've trouble with, and I've had it all through school, was based on my ears. I'm completely tone deaf. I can hum to myself in my mind a song, but I can't for the life of me produce it through my mouth. As a net result, I've had two deficiencies: music, I'm absolutely totally useless, and I have great difficulty speaking another language. I learned both French and Spanish to read. That wasn't hard. But to speak them--either one--

Chall: You have to have the ear for it.

Hassard: I just don't have an ear; it's just absolutely missing. In grade school music wasn't very important, so it didn't matter, and we didn't have language. In high school I took French, and I had a French teacher who thought she was doing the right thing, because I had straight A's, and she didn't want to give me anything less than a "A" to ruin the record. So she gave me an "A" in French; I took it for two years, and I could speak about six words. The rest I just can't enunciate. So when I got to college, I had to take an advanced French course, and I flunked it, the only course I ever flunked in my life. The French teacher told me, "Please, don't ever take any more French." I had to take some more language to take the junior certificate, so I took Spanish, which I knew from hearing it spoken so much in San Leandro. I could get by with beginning Spanish.

Chall: It's too bad they didn't recognize the fact that you didn't need to speak, but you could read it.

Hassard: Well, the French teacher in high school accepted that. The French teacher at Cal did not. I was supposed to carry on a conversation; I couldn't.

Chall: How about hearing? If someone is speaking the language to you, can you pick it up?

Hassard: If they speak a foreign tongue?

Chall: Yes.

Hassard: If they speak French or Spanish slowly, yes, I can pick it up. If they speak rapidly, no chance. [laughs] Or even in England, there are parts of England that both my wife and I have trouble with; you don't recognize it as the English language.

Chall: That's right. Well, even in the United States there are parts where you might not recognize the language, either. [laughter] So I assume that when you got to high school you found education more interesting, school more interesting. Or am I assuming wrongly?

Hassard: I just don't recall. Aside from the foreign language and music--both ear deficiencies, high school wasn't any more difficult than grade school.

Chall: But did you enjoy literature, English classes?

Hassard: Oh, yes.

Chall: History?

Hassard: History particularly.

Chall: So you did find something that was more interesting than in grade school.

University of California, Berkeley, 1927-1931

Hassard: Well I think when I was in high school and thinking about a possible future career, I wanted to be a history professor. In fact, all the way through undergraduate at Berkeley until I took one undergraduate course in jurisprudence, liked it very much. But Herbert Bolton was my hero. I fully intended to do graduate work in history, except the Depression came along and when I graduated in 1931, there were no jobs to be had anywhere, and so for lack of anything better, I enrolled in law school.

Chall: So that was the route. That's interesting.

Hassard: Well, as a matter of fact, our class at Boalt Hall was around one hundred in the first year, and that was almost double the size of any previous class. There were other kids just like me. There were no jobs to be had. If I was going to go into history, it just didn't seem worth it if I couldn't get any work.

Chall: Were you thinking of teaching at the elementary or at the high school level? Or the college level?

Hassard: At the college level.

Chall: So you would have to go on for a master's or a Ph.D.

Hassard: Ph.D., yes.

Chall: Okay, well then we might as well go right onto college. Now you chose Berkeley, of course.

Hassard: Yes.

Chall: Was that based on anything? Streetcar fare or--?

Hassard: Oh, I would say that Berkeley was my mother's choice when I was six years old. [laughter] Well, she had a very close childhood friend, girl, who married a man named Symes, who had previously been married, and who had two sons, both of which went to Berkeley. My mother was influenced by her friend, and I know that the Symes boys hated it, but several times when I was in high school, my mother arranged for me to go to Berkeley and see sights. As a matter of fact, I attended the very first Cal-Stanford football game that was ever held in the Memorial Coliseum, in November, 1923. The score was California 9, Stanford nothing.

Chall: How did you happen to go there? With the Symes boys?

Hassard: One of the Symes boys gave me his student ticket.

Chall: So you were really then ready to go.

Hassard: Yes.

Chall: You had a winning team on your side.

Hassard: Well, in those days, those were the years of the Wonder Team. They went five years straight without a loss.

Chall: Yes, some of these fellows there [on list of the Class of 1931 at their sixtieth reunion] were talking about some of the Wonder Teams in their years.

Hassard: Not with the Class of '31..by the time we got there. We had one Rose Bowl team, the others--.

Chall: That must be the one they remember.

Hassard: It was. Roy Riegals ran the wrong way. Roy Riegals was a year ahead of me at Fremont High School.

Chall: So you went to Cal and I guess, with your grade point average, you had no trouble entering.

Hassard: In those days, well, you had to have better than a "B" average to get into Cal even in those days, but I had a straight "A" average in high school.

Chall: How did you start out? Just taking the required classes the first couple of years?

Hassard: The first two years you had very little choice. Yes, I took required classes. I had trouble with the foreign language. First of all, in my freshman year I was very much interested in track. I was a skinny little kid, and I liked to run. That's where I met Adrian Kragen, by the way. He and I were on the freshman track team together.

But after the end of my freshman year, in the summer of 1928, through a friend in the fraternity to which I belonged, I went up into the Sierras and worked for the Pickering Lumber Company. It's nonexistent now. It was a big, southern-owned company. I worked at its mill in Standard, which is about five or six miles out of Sonora. It was a ten-hour day six days a week.

Chall: Doing what?

Typhoid Fever and the Consequences

Hassard: I was working actually in the yard, building the platforms on which the lumber is stored. At the end of the summer, there was a big forest fire higher up in the Sierra, and I was conscripted by the forest service, along with dozens of others, to fight the forest fire, which lasted about a week. There was a group of Mexicans--that I didn't pay any attention to, they also worked for Pickering Lumber Company--they were amongst the group of us that were fighting the fire.

After the fire was over, it was time to start fall semester, so I returned to Berkeley, and sometime in the first week, I passed out. I am told that the President William Wallace Campbell found me on his front lawn. I have no idea. It was a period of about a week to ten days in my life that's missing. I was just totally unconscious. Anyhow, I had typhoid fever. I guess I darn near died. So I missed that whole semester. But worse than that, doctors didn't know nearly as much as they do now about internal medicine and diseases, and they didn't have the diagnostic equipment they have now. All they knew about typhoid fever was that it damaged the heart. So I was told to be careful about my heart, because the high fever I had may have damaged it.

Well, that dashed my hopes for track, and it caused me to lose interest in school, basically. So, I'd say my sophomore and junior years were lost years. I got "C" 's without ever going to class. All I wanted to do was just get enough to graduate. Then I met the gal that became my wife, and that changed everything. [laughter] And I got interested again.

Chall: Is that so? Who was she?

Hassard: Her name then was Dorothy Jones. We've been married now for a little over sixty years.

Chall: All right. Well, I'll have to find out a little more about her in a moment, but to go back into this--your sophomore and junior years, in which you really weren't interested in much of anything.

Hassard: No.

Chall: You just were going to school because you were supposed to go.

Hassard: Yes. I wouldn't have been able to face my mother if I hadn't gone. [laughter] When I started as a freshman, I was rushed by a local fraternity called Del Rey. There were several kids in Del Rey who were from San Leandro, that I had known while I was in grade school and high school. I commuted from San Leandro to Berkeley most of my freshman year, but in those days that was a horrible commute.

Chall: A long way.

Hassard: Well, it took forty minutes to get to downtown Oakland, and then you had to stand on a street corner for anywhere from five to fifteen minutes to get a car to Berkeley, which took a half hour. And so you had to figure almost two hours to go from San Leandro to Berkeley. It's about twelve miles. And two hours each way each day just got me down, so I moved into the Del Rey house.

Chall: Oh, they did have a house?

Hassard: Oh, yes, on Euclid Avenue. They had a very nice house. In fact, all of the north campus fraternities and sororities had new houses, because they'd all been burned out in the fire in 1923.

Chall: So, you lived there.

Working Experience

Hassard: I lived there and I did odd jobs around--

Chall: Yes, I was wondering how you were able to afford to live away from home at that time.

Hassard: Well, several things. First of all, I worked, as I said, at odd jobs. I hashed, I washed dishes--.

Chall: In your fraternity house or in other fraternity houses?

Hassard: No, in sorority houses. One year, I think it was my junior year, I acted as chauffeur for two elderly ladies who had a great big old Packard; it was a huge automobile. [laughter] And they couldn't drive. They lived further up in North Berkeley, from our house about a half-mile. So a couple of days a week I'd chauffeur them around to wherever they were going. That gave me a few dollars, enough to pay the house rent. In addition, another characteristic of my mother was that of saving. That's hung over all my life, and it's instilled in my children and grandchildren. Whatever money I got had to go into the bank; I could not spend it.

Chall: Whatever money?

Hassard: Whatever money. So by the time I went to college I had a fairly hefty bank account--for those days.

Chall: I see. You had worked at odd jobs in high school?

Hassard: Yes. So I could draw on that if necessary, which didn't occur. I guess I still have it. [laughter]

Chall: You have your first dollar? [laughter]

Hassard: I think I do. But I could use it if necessary. And then if absolutely necessary, I could tap my parents. But they were third in line. First, whatever I could earn from working around the campus, and second, if necessary, the bank account, and third, my parents. And I think I had to tap my parents once, that was all.

Chall: But the money you earned while you lived on campus you could spend as needed?

Hassard: Yes.

Chall: That's very good. Where were you during the time you were so ill? Were you in the hospital?

Hassard: Yes. I was at Cowell Hospital. My physician became a lifelong friend, Dr. Bill Donald. He was the University doctor for Cowell.

Chall: Was there much typhoid at the time?

Hassard: No.

Chall: You got it up there?

Hassard: I got it up there from the Mexicans, for sure. They traced it down. No, I was the only typhoid case I guess the hospital ever had.

Chall: That was dangerous.

Hassard: Yes. Of course, it obviously did not affect my heart.

Chall: No.

Hassard: This occurred in 1928.

Chall: But you didn't ever run again?

Hassard: No. Looking backward, I was foolish; I could have. But at the time, medical wisdom was that if you'd had a high fever for a period of time, it affected your heart. So I thought that if I resumed track, I might keel over.

Chall: So during those couple of years then, you were simply taking courses. Do you remember anything that you liked, any professors that--

Hassard: History. History.

Chall: You did like history. Any professors that you particularly liked?

Hassard: Bolton. Oh, and there was another history professor--who talked as though he had mush in his mouth--named [Franklin] Palm. Most of the students kidded about him because of his mush mouth, but I enjoyed Palm; I thought he was a good teacher.

Chall: What history did you particularly like? American, European--

Hassard: It doesn't matter, any history.

Chall: So you went back to living in the fraternity house and working after you got your strength back?

Hassard: Yes. For a while, I think in my junior year, I worked for the California Cracker Company in Emeryville as the night janitor. And my job was to clean up the spilt dough on the floor. [laughter]

Chall: What an exciting job that was.

Hassard: Yes. It also taught me not to eat cookies and crackers, if you saw what went into them. [laughter]

Chall: I see. It's like eating sausage.

Hassard: Yes.

Chall: Now that we have, we assume, better health standards--

Hassard: I hope so.

Chall: We hope so. [laughter] Because I assume you do eat crackers.

Hassard: In 1929, 1930, I don't think there was any supervision at all.

Chall: How did you get these jobs? Just answering ads?

Hassard: Answering ads, yes. And as I remember, there was sort of a placement service on campus.

Chall: Now what about your own social life on campus and extracurricular activities? Did you have much time for that?

Hassard: Really, no. I worked on the staff of the Daily Californian really as an advertising solicitor for a while, but that interfered with my need to get gainful employment, so I didn't stay with that very long. After the typhoid, for the next couple years I didn't participate very much in any campus activity.

Chall: Do you feel that you were in sort of a depression?

Hassard: It's hard to say. That was sixty-two, -three years ago. I don't think I was depressed, I was just defeated.

Chall: Oh, really?

Hassard: Well, I couldn't do what I wanted to do. At least I thought I couldn't do what I wanted to do.

Chall: And track must have been a very important part of your life at that time.

Hassard: At that time it was.

Chall: Was it the competition or the running or what?

Hassard: I think both.

Chall: I think we're just about out of tape.

##

Chall: We were trying to consider how you were feeling during your sophomore and junior years. Just going, doing it because you had to?

Hassard: Yes.

Meeting Dorothy Jones [Hassard], 1930

Chall: Nothing much exciting. Well, tell me how you happened to meet your wife, who put you on a different track.

Hassard: I met her at the end of finals in the spring of 1930, the first part of May. Because of the flu epidemic in 1918, all schools were closed down for one semester. On reopening, everything was behind time, and the net result was that the spring semester ended in the beginning of May, and the fall semester started in the middle of August and ran through to mid-January.

Chall: That's what did it.

Hassard: Yes, that's what did it. But in any event, in May of 1930, at the end of final examinations, sort of by happenstance--it was something to do--three of us from Del Rey through a fourth, a chap named Chandler, arranged a blind date with three girls in San Leandro at the home of my grade school principle, W. O. Davies, whose daughter, Dorothy Davies, was in the same sorority as my future wife, Dorothy Jones. Well, anyhow, the three of us went then to the home of the Davies and spent the evening with the three girls. I guess Dot Jones and I were attracted to each other right away. When we left, I asked for a date the next night, and she said yes. And it just kept going.

Chall: What was she doing at the time?

Hassard: She was a student at Berkeley. She should have been in the Class of '31, because she graduated from high school exactly the same day I did, only she graduated from Alameda High School. She went right on to college, to Berkeley, in January of 1927. I stayed out for six months and worked. I did that on purpose; I was so young. I was beginning--I'm diverting myself now.

Chall: That's all right, because I didn't get that part of the story.

Hassard: Well, graduating from high school at sixteen, when all of the girls are eighteen, it just shouldn't be; it isn't right. [laughter] So I didn't want to go to college while I was still sixteen years old.

Chall: I see. You made that decision yourself?

Hassard: I made it myself. So I stayed out for six months, and my uncle Harry got me a job with Montgomery Ward, and I worked there until August. Then I quit and I started Berkeley. So I was six months after my Dot. She was majoring in education, I guess for lack of anything else, to become a school teacher.

Chall: Yes. Well, that was the place for girls those days.

Hassard: It was. Most of them were doing just that.

Chall: And she was a junior like you?

Hassard: Only she was six months ahead. Well, she was really a year ahead of me, because I was out for six months due to typhoid. She lived in Berkeley, about a mile from the campus, with her mother, who was a widow. That story in itself is rather interesting.

My wife's father was born in San Jose--or Campbell, close to San Jose. When he grew up, he became employed by the Pacific Mail Steamship Company, which is out of business now--it became W. R. Grace. He was stationed in Panama when he and my wife's mother decided to get married, and she took a ship down to Panama, and they were married in Panama.

Chall: My goodness.

Hassard: About 1908, I think it was. Anyhow, in 1916, he was assigned to Japan. He was the Pacific Mail representative in Kobe, in Japan. So my wife, at age six, was taken to Japan. Her first year of school was in a little home in which an English woman had something like eight students who were English or American or French or whatnot. In any event, he remained in the Orient; he was transferred from Kobe to Shanghai the following year. By sometime in 1919--my wife had gone to school in Shanghai for a couple of years--my wife's father and mother had a dinner party one night, in their home. When my wife got up in the morning, her father was dead. He had died of cholera in a space of hours.

Chall: Without even knowing it!

Hassard: He had dinner, and before morning he was dead.

Chall: I never heard of such a thing.

Hassard: That's why I'm mentioning it. That's the way cholera acts; it kills you immediately. So my wife and her mother had to come back to this country. She was nine years old, and her mother was like, in her thirties. Pacific Mail gave my wife's mother a job here in San Francisco, which she kept when it became Grace. First they lived in Alameda, and then when my wife started college, her mother sold their Alameda house and bought a little house in Berkeley. And they lived in Berkeley.

Chall: I see. Well, that's an interesting story. Her mother must have been a very strong woman.

Hassard: She was.

Chall: So, now you had a reason for going to school and finishing.

Hassard: Yes, I did. [laughter]

Chall: So you had one more year in which to do it.

Hassard: In order to graduate in my class, in '31, I had to take intercession and summer session, which I did. And I started getting A's again. [laughter]

Chall: Good! And what do you remember most about that last year? You were required to take some science classes, too, weren't you, in those days?

Hassard: Oh, yes, I liked those, science courses.

Chall: Do you remember any of those teachers in your science classes?

Hassard: I remember, I guess it was either biology or zoology. We had a very famous professor, and I can't think of his name at the moment. He was very enjoyable. I think I enjoyed anthropology courses most, of the sciences.

Chall: Anything else about your undergraduate days that you recall?

Hassard: No, I don't think so.

Boalt Law School, 1931-1934

Chall: Well, now having graduated, you thought you might want to teach, but you couldn't. So, we'll go on to law school.

Hassard: My wife and I weren't married as yet, but we knew we were going to marry. I don't remember the exact train of thought that was involved, but I abandoned the idea of being just a history professor, and I had enjoyed very much the one course in law that I took as an undergraduate, so I decided to go to law school. I liked it from day one.

In the midst of our first semester, our contracts professor named Professor [George] Costigan, had a policy--did it every year--of giving an examination to the first year students in contracts. I think it was primarily so the students themselves could get an idea of what it was like to take an examination in law. In any event, we had this examination, it was about in mid-October, I think, and when the papers were returned, they were laid down on the floor in the hallway, alphabetically. I found my paper and I had a "B+," and I was very disappointed. Then I discovered there weren't any other "B+'s." The highest other grade was a "B." [laughs] He downgraded everything. I had the highest grade in the class.

Chall: Well, that must have been elating.

Hassard: It was. I'm mentioning it because it was one of those points in time when an event results in a decision that affects the rest of your life. From the moment that I realized I had the highest grade, and the only "B+," I knew I wanted to be a lawyer. That was the first event in which I could judge both my interest and my ability in it.

Chall: Because the rest of the time you just sort of sailed through school without even thinking about it.

Hassard: Well, and also, law is a different study than other things.

Chall: Yes, totally. So now you really focused.

Hassard: Yes, I was. From that point on.

Faculty and Classes

Chall: Do you recall some other professors and their classes that you found particularly interesting or harrowing?

Hassard: Well, I found most of the professors at Boalt Hall very interesting; the one or two that weren't as interesting as the others I won't mention them. I enjoyed Costigan very much. I don't know whether the name "Captain Kidd" is still known in Berkeley or not. [laughs]

Chall: I've seen this, yes. I don't know, maybe just among people who went to college then.

Hassard: Who went to Boalt Hall. Captain Kidd--his full name was Alexander Marsden Kidd. But he was known as "the Captain," I guess to everybody that ever went to Boalt. He was a character, a real character, but he was a great teacher.

Chall: What did he teach?

Hassard: He taught criminal law, and he also taught business law. [chuckles] Criminal law was a first-year course; it was a two-unit course. Business law, which I think has been chopped up into several different names now, was a five-unit course, for the entire second year, and that was his major teaching project. He was extremely proficient in the Socratic method--the question and answer. He could dream up some of the damndest questions.

Chall: That is the way law schools--some of them--were run in those days.

Hassard: Yes. Well, I guess all of the better ones were. Henry Winthrop Ballentyne, as you would gather from his name, a Bostonian, had been a Harvard professor, was also very, very interesting. He taught torts and corporations. [Dudley] McGovney, who taught constitutional law, was also very interesting.

Chall: Were they interesting because of the way they taught?

Hassard: Well, their ability to communicate, their ability to get their points across, keep the students' attention.

Chall: There was a woman on the faculty, Barbara Armstrong.

Hassard: Barbara Nachtrieb Armstrong, yes. I knew her well.

Chall: Yes. She went on, I think, to work with Earl Warren? I'm not sure. Maybe I just know her from other areas.

Hassard: No--. She taught family law, which was marriage and divorce and childhood and stuff. She was very much interested in social things. She was a very good friend of Chester Rowell, who was the editor of the San Francisco Chronicle. And she and Chester Rowell tried to foist government medicine on the people of the state of California back in 1918, and it was defeated three to one on the ballot. But she also participated--she was not alone in this--but she was one of the chief architects of the Social Security Act under Franklin Roosevelt. I think that's why her name is best known.

Chall: Yes, it certainly is well known. I have Roger Traynor here. Of course, he became a judge. He was quite young, I think, at that time, teaching.

Hassard: Roger had only graduated three or four years before. He was the youngest guy on the faculty. He taught taxation, and he was also the editor in charge of the Law Review, the magazine. And I was on the Law Review my second and third years, two years. I knew Roger very well.

Chall: Did you ever argue any cases before him?

Hassard: Yes. But after I graduated, and it was several years, he was the chief draftsman of the California Sales Tax Act. I guess it was Earl Warren then, who appointed him to a judgeship. Ultimately, he went up to the supreme court and became chief justice.

The California Law Review

Chall: Well, tell me about the Law Review. That's usually considered a very prestigious journal to be working on while you're in law school. Was it, then?

Hassard: Yes. I think after your first year, my recollection is that the top 5 percent or so in the class were put on the Law Review staff. Then after your second year, it was expanded to the top 10 percent. I was on the Law Review for two years.

Chall: What did that require of you?

Hassard: Well, some of it was just plain copy-reading and that sort of stuff, but you were also required to write one or more articles for publication. If you look back in the Law Reviews of 1932 and '33, you'll find H. Howard Hassard in various articles.

Chall: Did you enjoy it?

Hassard: Yes. I enjoy everything connected with the study of law.

Chall: How did you pick your topics for the Law Review?

Hassard: Gee, I really don't remember.

Chall: They weren't assigned to you, were they?

Hassard: I think that some were and some weren't, but I'm not certain. This was long ago.

Chall: And did they have to go through lots of review at the time? Did other people have to check them out, peer review--?

Hassard: That's correct. Roger Traynor was the faculty member who read every paper and it had to pass muster with him in order to get into print.

Chall: How about your work with the other people? There weren't many on the Review. Did that become a sort of social focus for you in any way?

Hassard: To some extent. Well, I noticed in glancing through that list of the sixty years, the name of Tom McCarthy. Tom McCarthy was in the Class of '34 at Boalt, and he was on the Law Review. Nate Rowley was on the Law Review; he was not at the sixtieth reunion.

Hassard: Adrian Kragen.

Chall: Adrian Kragen, yes. And he speaks about Maurice Harband.[1]

Hassard: Yes, Maurice Harband was the editor my third year. He was number one in our class in grades.

Chall: And Juliette Blumenfeld?

Hassard: She was at the sixtieth.

Chall: Morris Lowenthal I think she later married.

Hassard: Yes, her husband. They were known as Romeo and Juliet when we were in law school. [laughter]

Chall: And Everett Brown?

Hassard: Yes. He is deceased.

Chall: Tom McCarthy you've mentioned. Cecil--

Hassard: Cecil Mosbacher.

Chall: She became also a judge.

Hassard: Yes.

Chall: With the Oakland Court?

Hassard: Yes, in the Alameda Superior Court. Cecil and my wife became very good friends when I was in law school, and she from time to time would have dinner with us.

Chall: And Cameron Wolf?

Hassard: Yes.

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[1] Adrian Kragen, A Law Professor's Career: Teachings, Private Practice, and Legislative Representative, 1934-1989, Regional Oral History Office, University of California, Berkeley, 1991, pp. 21-33.

Chall: Those are the ones that Adrian Kragen remembered. Maybe you remember others.

Hassard: Well, they were all in our class.

Chall: When did you marry? While you were still in law school?

Hassard: First year in law school, 1931.

Chall: Did your wife start teaching school?

Hassard: She taught school for one year; my first year in law school she taught down in Santa Magarita, which is in San Luis Obispo County.

Chall: Oh, my goodness, that was a long way out.

Hassard: Yes, it was. But after that, she stopped teaching and became a housekeeper.

Chall: I see. Did you start a family?

Hassard: No. We lived on my earnings, which were the magnificent sum of sixty-five dollars a month as the assistant librarian at Boalt. But my wife had saved some of her monthly expenses. She would buy good food--I mean, we didn't starve, but we didn't have steaks, either--on fifteen dollars a month. Well, a nickel would get you a quart of milk, and a loaf of bread. Our rent was twenty-five dollars a month. So between food and rent, that left us twenty-five dollars a month for everything else. The one extravagance was that I would buy a gallon of wine [laughter] on Saturday mornings, for Saturday night. But that cost seventy-five cents, so that was three dollars a month.

Chall: That was your big splurge.

Hassard: That was our splurge.

Chall: Did you go to the movies occasionally?

Hassard: Hell, no.

Chall: No?

Memorizing the Lectures

Hassard: No. Actually, I worked about four hours a day, four or five or six hours, and then in the evenings I studied. Another thing that actually was a help--this was true all the way through college as well as in law school. All the classrooms had these chairs with arms on the right-hand side. They never built one with the arm on the left-hand side. I'm a total left-hander.

Chall: Are you?

Hassard: Yes. So early in college I found it much easier not to try and turn around like this and take notes and bang my elbow into the person sitting next to me. [gestures] It was so darn awkward, I gave up. I never took notes in class. I'd listen, and then that evening I would prepare my notes. In law school I did that every day. Every evening I had to hunt and peck on the typewriter, and I would prepare the notes to the classes I'd gone to that day.

Chall: Ye gods! What a memory! You must have really worked hard to memorize that way!

Hassard: I did, but over a period of time it became habit, and to this day, I don't take notes.

Chall: Ah hah. It must have been extraordinary training for the mind.

Hassard: It is. It was forced on me. [laughs] I can't claim any credit for it.

Chall: No, that's really very interesting about the way those desks were. You're right. I wonder if they've ever thought about that since then.

Hassard: I don't think anyone ever thought about it, except the left-handers.

Chall: There are many of those. As a left-handed person, did your parents ever try to change you?

Hassard: My parents never tried to change me, but one of my teachers did, in grade school. In a matter of weeks I began to stutter. My mother stopped it. She saw the teacher and said, "Don't do that." Yes, they tried to do that. That's the worst thing they could have done.

Chall: Yes. Well, in those days they did; they did try to change children.

Hassard: Not realizing the brain damage that they were inflicting.

Chall: Yes. When, you're just totally set the other way.

Hassard: I am. I'm totally left-handed.

Chall: So you memorized everything. Well, then you really needed to concentrate when you got back to a quiet place at home.

Hassard: That's right. Although, I could have the radio on while I was doing it, and I wouldn't even hear the radio.

Chall: Ah, well, you didn't have rock then.

Hassard: Oh, no! I can't stand that. It hurts my ears.

Law School Sixty Years Ago

Chall: Is there anything else you want to tell me about law school? Was there any particular kind of law that you thought you might want to specialize in when you got out? Assuming you had a choice.

Hassard: No, no. First of all, law school sixty years ago was quite different than law school today. Specialization in the practice of law was quite rare. Most all lawyers were general practitioners. About the only areas of specialty were patent law--which of necessity requires certain skills that are different than most people have--and the field of taxation.

Taxation was really a brand-new field of law when I was in law school. The federal income tax had only been in effect for about fifteen years. In addition to that, at first the rates were about 4, 5, and 6 percent. I remember when I graduated from law school and got a job with Hartley Peart, he complained bitterly about his federal income tax, which was 8 percent at the upper bracket! [laughter] And so you know, until the sales tax came along, most people's only experience with taxation was property tax, and in the teaching of law, taxation of real estate and personal property is more in the courses on real property and personal property. So taxation, which Roger Traynor went into, was almost a brand-new subject, and it became a specialty. My friends that went into taxation are the ones that became rich.

Chall: I see. [laughter] They filled a niche that wasn't even existing. I think I have a few seconds left on the tape. Tell me where you and your wife moved when you were in law school and you married. You had an apartment?

Hassard: We had a little apartment, two-room apartment in Berkeley just off the campus, towards Shattuck Avenue. And we lived in Berkeley for two years after I graduated. I commuted on the ferryboats. But then in 1936, the year the Bay Bridge was completed, we moved to San Francisco and that's where we've lived ever since.

II THE FIRST YEARS IN THE PRACTICE OF LAW, 1934-1940

[Interview 2: May 6, 1992] ##

Lack of Opportunities to Practice Law, 1934

Hassard: I liked your very first question, number one on your outline. "Your decision to start practice in Mr. [Hartley] Peart's firm." [laughter] In 1934, law school graduates did not make decisions, they begged! [laughter]

Chall: That's what I thought you were telling me. How did you happen to connect here, then?

Hassard: Well, for some reason or another, whenever a law firm or a lawyer asked in 1934--when I graduated--asked for a student, the law school dean would send me. And shortly after graduation, when I was starting to study for the bar examination, he called me one day and said that Pillsbury, Madison & Sutro had an opening, so off I went to Pillsbury, Madison & Sutro, and I was interviewed by Gene Prince, a wonderful person, by the way. He's now deceased, but he became a longtime good friend of mine. Anyhow, he hired me. I went back, I was married, and told my wife, and we were delighted. Then I was still working in the library at Boalt Hall, so I quit so I could spend fulltime studying for the bar.

Some weeks later Gene Prince called me, very distressed, said, "Come over and see me." So I went to San Francisco and saw Gene Prince and he told me that he could not hire me because Marshall Madison had given the job to a classmate of mine, whose father was an insurance broker, and who promised Marshall Madison he would give Pillsbury, Madison & Sutro his firm's business. That was the only opening they had, so I was out of a job.

He asked me how much was I suffering on account of the consequences, and I told him that I had quit my job, so I had no income, and I was studying for the bar, so I couldn't take a job, and I had been counting on employment with Pillsbury. So he wrote a personal check to me for five hundred dollars, which I accepted. I hated to because it was not his fault, but I needed it; I needed it desperately.

Then I went back and I told the dean, the dean's staff, what had happened, and a few weeks later I got another call from the dean, saying an attorney in San Francisco named Hartley Peart had phoned and said he had an opening. So off I went to Hartley Peart's office, and after an interview, he hired me for sixty dollars a month. Now, that sounds like nothing today, but sixty dollars was the going wage for secretaries, as a matter of fact. You could live on it, just barely, but you could. I accepted; I was the first person in my class to get a job.

Some of my friends went a whole year before they could find any employment that paid anything. There were several that went to work in law offices for nothing. The current depression is nothing, just nothing, compared to the 1930s. Everybody was out of work; nobody had any money. There was no unemployment insurance; there was no health coverage. The only government things government did were at a county level, a local level. I'll get into that on one of your other questions here.

Chall: Yes, it was known then as poor relief.

Hassard: Yes. It was indigent care. But that's all there was.

Chall: Yes. Were you always sent out because you were so high in the class in terms of your abilities?

Hassard: I really can't answer that. I think it was a combination of that, plus the fact that the last two years in law school I was the assistant librarian under Rose Parma, who was the librarian. I actually operated the library from five [o'clock] in the afternoon till ten [o'clock] at night, and closed it up, seven days a week, Saturdays and Sundays. So the dean and most of all the professors got to know me personally, more than they did most of the students because I was around there more, and they needed my services to locate books that they wanted.

Chall: Yes, this has an advantage to an attorney, to know how to use a library.

Hassard: Oh, I can tell you an incident that occurred in the second year after I started practice that proves it conclusively. I knew how to find the yearbooks. I couldn't read them, because they were written in what's called Law Latin, which is sort of a pig Latin, and they were all in tiny, tiny, little print. Have you ever seen a copy of the Magna Charta?

Chall: Well, I may have seen it in museums.

Hassard: Well, take a look at it sometime, you'll notice it's in handwriting. It's written in a combination of Latin and French. But the handwriting itself is so tiny that even with a magnifying glass you have trouble.

Chall: And the law yearbooks were written that way, did you say?

Hassard: Yes. They were written by monks, they were the only people who could write. And apparently they were all young, so their eyes were good, and it's just the way they wrote.

Chall: So you were fortunate to find a job right away.

Hassard: I was lucky, very lucky.

Chall: In other words, there weren't very many opportunities.

Hassard: Very few. Well, as I mentioned, Pillsbury, Madison & Sutro had one opening.

Joining Hartley Fiske Peart's Small Firm

Chall: And they had only one here, as I understand, with Hartley Peart.

Hassard: He only had one every ten years or so.

Chall: Is that so? Somebody, I think you had told me, had gone to another firm, and there was the opening here. When Mr. Peart needed an attorney, he had one opening.

Hassard: He had an opening, that's why I got the job, because an assistant had left to become a partner with another lawyer in San Francisco. The practice of law then was so different than it is now. It's difficult to draw a picture of how it was sixty years, fifty years ago.

Chall: There wasn't much to the practice? There wasn't that much law to handle, was there?

Hassard: No. There wasn't. Well, the population of the state of California was under five million in the 1930s, one-sixth of what it is now. The number of lawyers was probably less than 10 percent of what it is now, or less than 5 percent of what it is now. As a result, there were very, very few law firms, as there are today. Those that existed were quite small by modern standards. Most lawyers practiced solo, that is, alone or maybe two or three to a shared space. Lawyers and judges knew each other. Your questions about other lawyers and judges, I came in contact with. Well, there were so many that that's when I lost my composure, because I couldn't remember names of many, many.

Chall: That's all right. But in those days there was a small group.

Hassard: A small group.

Chall: Where was Mr. Peart's office at that time?

Hassard: Before 1906, I don't know where it was.

Chall: But when you came to it.

Hassard: Oh, when I came to it in 1934 it was in 111 Sutter, which was originally known as the Hunter-Dulin Building. That's back when it was built in the twenties. Before that, before he moved to the 111 Sutter building in the late 1920s, when it opened, he was in the Humboldt Bank Building. I do not know exactly when he moved into the Humboldt Bank Building; I know he was there by 1912, and some years before, probably around 1908 or 1909, because it was rebuilt after the earthquake.

Chall: Where was the building?

Hassard: I can show it to you. [looks out the window] [laughter] No, I can't, I can't quite. It's on Market Street, between Third and Fourth. It's on the south side of Market Street, where the old Claus Spreckel's building is, which has a different name now, which survived the earthquake, on the corner of Market and Kearney. You walk up another few hundred feet and you come to the Humboldt Bank Building.

Chall: One office that I was in a long time ago was an old building. Dark, very dark, the walls were mostly wood panel. It was William Malone's office building.

Hassard: I remember the name.

Chall: He was an active Democrat.

Hassard: Yes, he was. He was sort of the boss of San Francisco.

Chall: Yes, that's what he was known as. That's right.

Hassard: I'm trying to remember where his office was located. I knew his younger associates better than I knew him. Ray Sullivan was a very good friend of mine, became a supreme court justice.

Chall: Yes, the buildings are not the same, even the law offices don't look the same.

Hassard: No, they don't.

Chall: In this office I don't hear anything, but in olden days I'm sure we would have heard the typewriters clicking away like mad.

Hassard: Yes, that is correct.

Chall: Now everything is so quiet. All right. Can you tell me a little bit about Mr. Peart? How old was he when you first met him?

Hassard: In his fifties. He was born on a farm in Yolo County, just outside the town of Woodland. His parents, his father, came from England. Peart is a North English name, if you're familiar with England. The Peart family was in Cumbria, which is just south of the Scottish border. I don't know where his mother's family came from, but in any event, they were early Californians. Hartley Peart was born in, I think, 1877. For some reason or other, he just would never state his age or his exact date of birth, except I know it had to be in 1877. It was an interesting family. His mother was a superintendent of schools for Yolo County.

In any event, he went to Berkeley, he went to Cal, graduated in 1898, then he went to Hastings. Now, in 1898 there was no Boalt Hall, there was no Stanford law school. Hastings was the law school, and he went to Hastings, and he graduated from Hastings in 1901, and then he started practice in San Francisco.

And as I say, there was a period between 1901 and 1906 I know nothing about, because he never referred to it. I do know that shortly after the earthquake he was in the office of George Hatton, and that some time thereafter they moved into the brand new Humboldt Bank Building. I know that through Hatton, who was an insurance defense attorney and also had some connection with the Southern Pacific--he was not the lawyer for the Southern Pacific, but, he had a great deal of political power. And through George Hatton, Hartley Peart became the inheritance tax attorney for the city of San Francisco about 1906, along in there, when he was only five or six years out of law school. A year or so later, he became inheritance tax attorney for the state of California.

Chall: That's a nice plum.

Hassard: Well, today it's nothing because we no longer have an inheritance tax. But at the turn of the century inheritance taxation was one of the few sources of revenue for the state of California.

Chall: Is that so?

Hassard: Well, there was no sales tax, there was no income tax, there was no corporation income tax.

Chall: That does away with all the tax attorneys that we have now.

Hassard: It sure does. The basic taxes were tax on real property, tax on personal property, tax on inheritance, and that was the main source of revenue for the state as far as I can determine. Then there was a corporation franchise tax, which was nothing like today's corporate income tax. It was a once a year flat sum.

Chall: Fee.

Hassard: Basically it was a fee. And then there were lots of local business taxes and fees and that sort of thing. But from an overall taxation point of view, taxes were nothing compared to what they are now, and inheritance tax was a big tax. So those two jobs, which were not fulltime by any means, they were just clients, really set Hartley Peart up in practice. He had them oh, for roughly ten years. They were political plums obtained through Hatton. He lost the inheritance tax and some other political jobs he had when Hiram Johnson became governor in the late nineteen teens.

Chall: Then by this time he had other--

Hassard: Other clients, yes. Hatton had represented quite a few insurance companies, and Hartley had acquired those. I don't know when Hatton died, but it was sometime between 1910 and 1920.

Chall: Long before you came in.

Hartley Peart: His Social and Political Influence

Hassard: Long before I came in.

Chall: So what sort of a person was he? He came from a very small town to a very large--"the City," as we call it.

Hassard: It was the "City;" there weren't any others.

Chall: That's right, and he did well, obviously. Was he a really hard worker? From what I gather from reading Miriam's work here, he must have been a hard-working man.[1]

Hassard: Yes, he was. He was diligent, hard-working. He was very outgoing. As he grew older he became rather garrulous, but he wasn't when I first knew him. He made friends readily, and as I say, he was an extrovert. He mingled in the community, so he was well known.

Chall: He was well known among political people too, wasn't he? Among politicians.

Hassard: Yes, he was. It's long gone now, but back in the '20s, '30s, '40s, and '50s at the Palace Court, at the Palace Hotel, which was the hotel, there was a table set aside at noontime called the Cabinet Table. And if you were invited to attend the Cabinet Table two or three times and allowed to pay your own luncheon check, that made you a member.

Chall: Is that so?

Hassard: They were the governance of California.

Chall: The governance, did you say?

Hassard: Governance. Some of them were elected public officials, but this was the power center.

Chall: Who had set this table aside? Who was the sort of key to the table?

Hassard: Well, when I came in 1934, the patriarch of the table was a gentleman named Chester Rowell, who was editor of the San Francisco Chronicle, and was a political power in California second to none. Most of the members of the California Supreme Court were members of the Cabinet Table. I'm trying to think of names that you would recognize. United States Senators, but--.

Chall: Let's see. Johnson was a senator for a time.

Hassard: Yes, he was, after he was governor. But Hiram was never part of the Cabinet Table. He was an outsider.

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[1] Howard Hassard, Fifty Years in Law and Medicine, An Oral History, an interview conducted by Miriam Stein, 1985. [attached]

Chall: Culbert Olson? He wouldn't have been at the table, would he?

Hassard: Oh, no, no. [laughter] "Sunny Jim" Rolph was a member. I saw some article that mentioned "Sunny Jim" Rolph just the other day, and they spelled it S-o-n-n-y. It was not "sonny" in the sense of his offspring, it was "sunny" in the sense of sunshine. S-u-n-n-y. I'm trying to get some names that, well, I know a lot of names, they were lawyers in San Francisco.

Chall: I think that would be good. If, when you're editing, you want to lay them in there that would fine, because this is a wonderful bit of state and local history. About how many people sat around that table?

Hassard: [Those he could recall are listed by Mr. Hassard] Don Owen, a patent lawyer; Judges Douglas Edmonds, Homer Spence, and John Shenk of the supreme court; William Wallace, a San Francisco attorney, whose wife was a famous movie actress. Also, there was Plessie Cummins, one of the inventors of the diesel engine. He carried on his engine experiments in his 100-foot yacht which lay in Sausalito Harbor which he could see from his beautiful hilltop home in Sausalito.

Chall: That was every day at noon?

Hassard: It was every day at noon, and you came when you felt like it. And it lasted, I guess, half a century, from the time it was started until it finally dissolved.

Chall: Is that so? So that there would have been a--?

Hassard: Oh, there was a rotating--. After Hartley Peart's death I was invited to it, but I was really too busy.

Chall: You didn't attend?

Hassard: I didn't feel like I could take the time.

Chall: But would you have enjoyed it?

Hassard: Some, some of it I would have enjoyed quite definitely. As I remember the table, it was about ten to twelve people who could get around it. It was a pretty good-sized table, and I remember its location. As you walk into the Garden Court, it was on the left-hand side to the rear. It was on a corner, so it was not noticeable particularly.

Chall: But I'm sure that the cognoscenti knew what was going on. It was noticed. [laughter]

Hassard: The reason Hartley Peart became a member of the Cabinet Table was that his wife's father, whose name was O'Brien, was in the construction business, and did construction work for the city and county of San Francisco back in the nineteenth century, and grew very rich thereby, and also was predecessor to Malone, whom you mentioned.

Chall: Oh, is that so?

Hassard: Yes.

Chall: The Democratic boss, as it were?

Hassard: Well, I think he was more than the Democratic boss. He was the boss, political boss, period. [laughs]

Chall: Do you remember O'Brien's first name?

Hassard: Oh, no, I can't remember it now.

Chall: So Hartley Peart had money anyway through his wife.

Hassard: Yes.

Chall: So his practice wasn't--he didn't depend entirely on his practice.

Hassard: Well, no. I think he earned his way.

Chall: Yes, probably so. Sounds that way. Did he become kind of a mentor to you? Were you the youngest person on the staff when you came on?

Hassard: Absolutely, yes. I was the staff. [laughter]

Chall: But there were--.

Hassard: No, there were two other lawyers, Gus L. Baraty, who also graduated from Hastings, in 1910, whose family--they were Basques. They were winegrowers and winemakers. Gus Baraty never touched a drop of alcohol in his life. [laughter] He was a terrible bartender, because he didn't have any idea what size to make a drink, and he'd pour a glass of, say, whiskey, of about eight ounces. [laughter] So it was Coca-Cola. But in any event, there was Gus Baraty, and there was Judge Sylvester McAtee, who had gotten the title of "Judge" because he was a police court judge for a while, back at the turn of the century. And there was me.

Chall: Were Mr. Baraty and Mr. McAtee about the same age?

Hassard: Yes.

Chall: I see. So you were really a young newcomer.

Hassard: That's right. Yes, Gus Baraty was the same age as my mother, born 1883, so in 1934 he was in his fifties.

Chall: So they were all about the same age.

Hassard: Yes.

Hartley Peart: Hassard's Mentor

Chall: We talk about mentors these days, but was Mr. Peart your mentor in a sense? Did you feel that he was interested in you and in moving you forward in any way?

Hassard: He did.

Chall: He did, but I don't know if he meant to do it.

Hassard: That's difficult to say, because as time went on, I think our relationship gradually changed. Yes, I'd say that he was my mentor and he did push me ahead. One year after I started, he put me in the forefront of the California Medical Association's legislative position because in the depth of the Depression the doctors had voted to go in favor of government medicine. That so infuriated Hartley Peart that he couldn't keep his mouth shut about it, and he told them what he thought. So a committee that was set up to implement this decision had no confidence in him, because they knew he was absolutely totally against what they were going to do, so he put me in, as a fresh young kid.

Chall: So he did have a great trust in you; he gave it to you rather than to Judge McAtee or Mr. Baraty.

Winning the Pope and Talbot Tax Case

Hassard: That's right. Another thing happened again in the first couple of years after I finished law school. I think it was in 1935, sometime in the middle of the year. He called me in his office and gave me a file to study. The file was a file of a case involving the Pope and Talbot Shipping Company, which was a big, coast-wide shipping company in those days. It was a tax case. At the time he called me in and gave me the file, the case was in the United States Court of Appeals for the Ninth Circuit. It had gotten there because Pope and Talbot had been assessed about $75,000 by the Internal Revenue Service.

Pope and Talbot was represented before the IRS and the tax court by an accounting firm named Lester Herrick & Herrick, whose chief at that time was Anson Herrick. It was a local--in those days, all accounting firms were local. In any event, Lester Herrick & Herrick had lost it before the IRS, and had lost it in the tax court. They then retained Hartley Peart to represent Pope and Talbot in the Ninth Circuit Court of Appeals, because primarily, accountants could not appear in the Ninth Circuit. They could appear in the tax court. They had lost it ingloriously, you know. [chuckles] Hartley, frankly, I don't think knew what to do with it, so he gave it to me.

Chall: He wanted to win.

Hassard: A while ago you mentioned something about library experience being useful. Well, when I read the file, I read the section of law under which the IRS was basing its $75,000 assessment. I observed that there had been--

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Hassard: --interpretation of the language in one section. In fact, one short paragraph of this particular law. Well, I knew that that meant that legislative intent was an important factor, and I noticed that for the tax court, the arguments on both sides utterly ignored the question of legislative intent, and neither side cited any authority, neither side cited anything about it, they just ignored it. And that was the key of the case. From my library experience, I knew that the Congressional Record was way down in the basement of the library. [laughter] And I knew where the Congressional Records were located; of course they take up about a half-mile. So in the evenings I would go to the library--I was twenty-five, so my eyes were good, I could see in the dark, because it was always very dark [laughs]--and I would go down there and search for the Congressional Record of the particular year in which this law was enacted. Then I had to go through thousands of pages in several volumes to find the committee report. I finally found it. I finally found the one part of the committee report a reference to the precise section that was involved, and the interpretation in the report favored Pope and Talbot. So I wrote the brief on behalf of Pope and

Talbot entirely centered around a Congressional Record and the interpretation in the Congressional Record of the meaning of this particular paragraph. And the Ninth Circuit reversed and decided in our favor.

I know that impressed Hartley Peart no end. He charged $7500, 10 percent of the $75,000, for his services. And when he got the check, which he got promptly, because Pope and Talbot of course was delighted, he gave me a check for $750. Remember, that was 1935. Seven hundred fifty dollars would be like--I've never received a bigger check. [laughter] It would be the equivalent of about a $15,000 check today.

Chall: You must have gone home just walking on air.

Hassard: Oh, yes. But I think ever after that he had complete confidence in me. But going back to the library, if I hadn't had that library experience, I'd have never have been able to find the Congressional Record and--.

Chall: Well, I guess they probably use it in history classes.

Hassard: No. And it's so voluminous and so huge and it's so poorly indexed--you try to find something in it. It's not easy.

Chall: And the print wasn't very good and it's probably not any better now.

Hassard: No, no, the print's terrible.

Chall: The paper isn't very good paper.

Hassard: It isn't any better today than it was in 1925. I think that was really a turning point in my career.

Chall: Were these three men partners in the firm?

Hassard: No, in the thirties each had his own independent practice. Although both Baraty and McAtee did work for Hartley Peart, which was basically overflow.

Chall: They supported the rent and a couple secretaries, is that how it went?

Hassard: Well, there was a complicated method between them, of calculating the overhead and that sort of thing.

Forming the Partnership: Peart, Baraty and Hassard, 1945

Chall: I think I read in Fifty Years of Law and Medicine that you became a partner. Was it about 1945?

Hassard: Publicly in '45. But in the early forties Hartley Peart started treating me as a partner, say from about 1942 on, although the name didn't change on the letterhead.

Chall: Was this a change in the business, then? Because the other men weren't partners.

Hassard: Basically, he gave me 10 percent net of whatever the firm made. But in January, 1945, we formed a formal partnership of Hartley Peart, Gus Baraty, and myself. McAtee was not included for two reasons. One was, he preferred to be a lone wolf. It wasn't a matter of animosity or anything, he just preferred that. Secondly, his health began to fail, and he had a stroke shortly thereafter. And then the firm became known as Peart, Baraty & Hassard.

Chall: In addition to the Cabinet Table, I think you told Mimi that when you first came to work for Mr. Peart, there was in the library a large black leather upholstered rocking chair.

Hassard: There was.

Chall: I can imagine what it looked like, but I don't think I've ever seen that kind of a rocking chair.

Hassard: Well, it is a rocking chair like this [Hassard's chair] except it was black leather and had great big shoulders, and it was wide and it was deep. You'd sink down in it. This [his chair] was Hartley Peart's chair in 1934. The desk and the chair. They go back at least to the 1920s when he moved. In fact, all the furniture in this room, except the credenza and refrigerator, they are new. Yes, there was this black rocking chair.

Chall: Now, you said it was so they could talk to the governor.

Hassard: [laughs] Well, I was told; I do not know this of my own knowledge. That in the early part of this century, say between 1906 and Hiram Johnson's election ten years later, the governors would come there to get their instructions from Mr. Hatton. Not Hartley Peart, but Mr. Hatton.

Chall: Well, that was a different era.

Hassard: Yes, it was.

Chall: Although I suspect that those things are being done now, but we just don't know about it.

Hassard: Well, [chuckles] it was a different era.

The Connection with Whitaker and Baxter

Chall: You had mentioned along the way, and in Mimi's book, too, from your interview with her, that Judge McAtee had done work for Whitaker & Baxter from time to time--

Hassard: That is correct.

Chall: --running campaigns, speeches, arguments, pros and cons.

Hassard: Correct.

Chall: Now that's a real political activity.

Hassard: That's right.

Chall: So what was that all about? Or was that just special interest politics?

Hassard: Well, politics in a way was his special interest. He liked to write speeches, and I can't give you any real specifics; I'm thinking back now. I don't know when Clem Whitaker and Judge McAtee met each other. It was before 1934, I know that, before I arrived on the scene. But how long before, I don't know. Clem Whitaker and his wife, Leone Baxter, formed their partnership; they had both been newspaper people. They formed their partnership and went into a brand new business; they really were the originators of the political consulting firms. They went into the business of representing politicians running for office, to help them get elected. Earl Warren was one of their clients for years. Their first one was a United States Senator back in the twenties, and I'm trying to think of his name.

Chall: Well, let's see. It wasn't Joseph Knowland.

Hassard: No, no. He never represented Knowland, he didn't. Bill Knowland was the one. They didn't think much of Bill Knowland's intelligence. No, this was a senator from California who was quite famous, but it was in the late twenties. At any event, at some point in time, Whitaker retained Sylvester McAtee to write speeches on behalf of one or more of his clients who was or were running for public office. And that was in being when I started in the firm in 1934. It was just every once in a while, Clem Whitaker would need a speech.

That way, some time in the late thirties, I became acquainted with Clem Whitaker. I was asked to do something by McAtee to help in some way. I forget the details, but I think I was asked to do some research. Whatever it was, Clem and I met each other, and then gradually, as McAtee's health disintegrated, Clem turned to me--not for speech writing, because I didn't particularly like to write speeches, but for other things. I became his lawyer and a lawyer for Whitaker & Baxter.

Chall: That must have been an interesting assignment.

Hassard: Well, a part of Sacramento.

Chall: Interesting people.

Hassard: Interesting assignment, interesting people. The political power of Clem Whitaker at the height of his career is very difficult to describe in today's world, in today's terminology.

Chall: How would you describe it in those days?

Hassard: Well, he had tremendous power because the people he helped elect were grateful to him, looked up to him, respected him, and his power was not the kind of raw boss type of power. It was more the power that comes from the ability to help a person out.

Chall: Would that mean that he might make suggestions about appointments?

Hassard: He certainly would. Well, I can list just an example. He handled Goodwin Knight's campaign when Goodwin ran for governor, in 1954, after having been lieutenant governor and succeeding to the governorship, when Earl Warren went to the Supreme Court. So Whitaker & Baxter handled Goodwin Knight's campaign. The campaign was hard fought. There were some legal things involved in it that I don't remember in detail, but accusations were made against Goodwin, and it was necessary to respond to them. In any event, after Goodwin got elected, he and Clem came into my office one day and Goodwin said, just kind of matter-of-factly, "Hap, I appreciated the help you gave. You got one judgeship." And I said, "Well, I don't want it myself." Well, he said, "Whoever you want."

Well, I had a friend a friend named O'Brien--no relation to Hartley Peart's father-in-law--Bill O'Brien, who had been in the U.S. Attorney's office in earlier years and who had been in practice in San Francisco for twenty-five or thirty years, I guess. We had known each other since 1934. When I started, Hartley Peart's office was on one side of the eighteenth floor of 111 Sutter, and Rogers Clark & O'Brien was on the other side; that was Bill O'Brien.

I knew that Bill O'Brien wanted to be a superior court judge in the world's worst way; he could taste it, he wanted it so badly. [laughs] So I called, got in touch with him and said, "Bill, all right. I'm going to recommend you, but you're going to have to put up a big campaign. I don't want it to look like this is something that can be dashed off in a moment or two." Well, he was a very good, devout Catholic, so he immediately went to work on the archbishop and whatnot, and they started flooding Knight's office with recommendations of William O'Brien, and in a few weeks, he appointed William O'Brien to the superior court. There was no money changed hands, there was no further commitment. There was just gratitude for help in his campaign. You can't do that today.

Chall: Did you have any other opportunities like that?

Hassard: Not that direct. I think I could have had public office if I'd wanted it, but I did not want it. That's why I turned down Goodwin Knight. If you've ever sat through a day in the life of a superior court judge--

Chall: Just waiting to be impaneled on a jury.

Hassard: All right, that gives you a taste of it. You would understand, I think, my reactions. I would be bored to death. In fact, I had two of my classmates who became superior court judges, and after a year or two, they both resigned, both for the same reason. One was over in Shasta County, in Redding, and the other was in Eureka. They both said the same thing,--just bored stiff sitting there, doing the same thing over and over and over again. Both also couldn't stand to sit there and not be able to do a darn thing about an incompetent lawyer goofing up a client's case. They both said they felt so sorry for the client, but they couldn't interfere. You know, as judge they had to be neutral. Trial judge is not any fun. In fact, it gets--I said I'd be bored stiff. An appellate judge is a little bit better. It's better, but it becomes drudgery also.

Chall: Whereas there's always something active and fascinating about some case that you've just taken on.

Hassard: Yes.

Chall: It's a challenge.

Hassard: That's right. In the practice of law, every day brings something new and different.

Chall: And that's what you look for.

Hassard: Yes.

Physicians and Attorneys: Dissimilar Points of View

Chall: There seemed to be, as a result of Hartley Peart's activities with the California Medical Association, a great deal of--well, what would you call it?--friendship among the lawyers and the doctors. I mean, Hartley Peart and maybe other attorneys and the doctors. Because you mentioned, I think, the annual picnic. Was it in a doctor's home?

Hassard: George Reinle, on his ranch up on Mt. St. Helena. No, that was rather unique, I would say. I think the relationship on the whole between physicians and attorneys has been the same through the centuries. [laughs] Mostly there's a lack of understanding on the part of each on the role of the other in society.

Chall: Is that right? No matter what side you're on?

Hassard: That's right.

Chall: Can you explain that?

Hassard: Yes. In a way, I think I learned to think like a doctor in the years in which I was the attorney for the California Medical Association, and it's quite a different process. The teaching methods, teaching approach, in a medical school and in a law school are exact opposites. They're one hundred eighty degrees apart. Physicians are taught in a laboratory, they're taught to reason on the basis of numbers--.

Chall: On numbers?

Hassard: On numbers, trial and error type of thing. It's difficult to put in a few words, but it's an entirely different approach to seeking the truth. In law you're taught to go by precedent, to reason on the basis of logic; you're taught an entirely different approach to finding the truth than you would do if you were in a medical school. After a young person spends four or five years in one or the other environment and then goes out into the world and continues that different environment, they get so they can't understand each other.

Chall: That's interesting. You worked with the doctors for so long that you say you gradually began to understand their point of view.

Hassard: Understand their point of view and how they approached things.

Chall: And you utilized their point of view in developing your work in the law. Is that it?

Hassard: That's right.

Chall: There are some doctors who do become lawyers, or vice-versa.

Hassard: Oh, it's quite common.

Chall: I wonder how they--.

Hassard: It's a phenomenon that's sort of baffled me all these years. It's mostly young doctors, young physicians, who become apparently disillusioned with the field they've gone into--I'm guessing at that, I never heard one say that--and look upon the law, because it _is so_ different, probably, as a greener pasture somewhere else. So they start studying law.

Very seldom does a lawyer go the other way, study medicine; it's rare. It's mostly physicians who study law and become both. The ones that succeed at it choose one field or the other, and stay in that field. They either become lawyers, forget that they were doctors, or they become physicians who know something about the law, and they practice medicine. To try and do both just doesn't work.

Chall: I've always thought that maybe because there's so much malpractice and such things as this now that the doctors who go into law feel that they understand this better.

Hassard: But there again, some physicians, such as Don Harper Mills down in Los Angeles, who is a physician, studied law and became a lawyer. He's remained a physician. He's used his legal training to better understand the processes of the law. He has become a very, very nationally known expert in the ability to apply legal principles to a medical problem. But he's remained a physician.

Chall: Is he used as an expert witness or anything like that?

Hassard: He has been in the past, but Don's--I don't know what his age is, but he's pretty close to my age, so I don't think--. I'm sure Peter Grant referred to him some time or other.[1]

Some Early Memorable Cases: Landmark and Otherwise

Chall: Now we might swing into the question of some of your earliest cases. I'm not really sure when I went to look at your journals, not being an attorney--and they're not written in easily understood English--that I understood what I was going to find for us to talk about.[2]

Hassard: Yes, I understand. [hearty laugh]

Chall: I started with Volume 59, I think that's where I started, but I did a bad job, I must admit, of not getting down the date of the journal, so I can't tell you--

Hassard: It doesn't matter. If you can give me a name--

Chall: Some of these looked interesting to me. First of all, tell me what the journal represents. Because I couldn't quite figure out why some cases were in the journal and others obviously weren't.

Hassard: Well, it's those cases that went up on appeal so that there was a written transcript of record and written briefs that are public record, because for briefs in appellate cases, copies are filed in the law library of the state supreme court and in the major law libraries throughout the state. So they're public documents. Cases that did not go up on appeal were not put in the book.

Chall: But sometimes the case would be put on appeal to the supreme court, but I wouldn't find any reference then to what occurred at the supreme court level.

Hassard: No, the purpose was just to record the briefs themselves and the transcripts themselves. The actual cases were all right behind you in the next row of shelves.

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[1] Peter Grant, "The Struggle for Control of California's Health Care Marketplace." (Ph.D. dissertation, Harvard University, 1987).

[2] "Transcripts and Briefs." Hartley F. Peart.

Chalmers-Francis v. Nelson: A Landmark Medical Case

Chall: Well, I just wondered what I was really looking at. So I picked out a few cases here and there because I saw either Hartley Peart's name on them, or yours. These may not be very important. The first one had to do with plaintiff William B. Chalmers, et. al--

Hassard: Oh, yes, Chalmers-Francis v. Nelson. Yes, that was an important case; it's a landmark case. Anesthesia was in its infancy, essentially, as was x-ray, in the early part of this century. In the first three decades of the twentieth century, most anesthesia was delivered by nurses. Very seldom did physicians learn enough about anesthesia to be able induce unconsciousness. But gradually, in the twenties, a new medical specialty began to evolve, anesthesiology. It involved physicians who studied anesthesia from a medical point of view, and weren't just technicians. The nurses were just technicians; really, the surgeon told the nurse how to give an ether anesthesia or one of the few alternatives then known.

Chall: That's about all there was.

Hassard: That's about all there was, then. Some time or other in the early 1930s, one of the brand new doctor anesthesiologists, who was a Canadian, named Chalmers-Francis, was practicing anesthesiology in Los Angeles. He felt that he was being discriminated against and he was unable to earn a living because at the hospital nearest where he had his office, St. Vincent's Hospital, the surgeons there just used nurses. One of the nurses was named Dagmar Nelson.

Chall: My, you have a good memory.

Hassard: So he, on his own, went to a lawyer, some guy in Los Angeles. I don't even remember his name, but I think he was pretty much over his head in this situation. But in any event, he filed a lawsuit on behalf of Dr. Chalmers-Francis against Dagmar Nelson and the hospital, alleging that they were interfering with his right to earn a livelihood, and that they were practicing medicine without a license.

He lost the case in the trial court, and he then appealed to colleagues who were medical politicians, who were on the governing boards of the Los Angeles County Medical Association and the California Medical Association, and he asked for monetary help; he wanted money to help finance this lawsuit. It came before the governing board of the California Medical Association, called the Council, and after discussion--

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Hassard: They decided to give him legal help at the expense of the CMA. And again, by that point in time, the case was already on appeal, so Hartley Peart asked me to review the transcript and to write the opening brief on behalf of Chalmers-Francis. So from that point on I handled that case. I wrote the briefs on appeal and ultimately the California Supreme Court decided that indeed, the administration of anesthesia was within the scope of the practice of medicine and that it required a medical license in order to undertake general anesthesia. It was a landmark case; it's reported nationally in the books. It's still the law, although by acts of the legislature over the years, certain nurses have been permitted legally to administer anesthesia. They're called nurse anesthetists. They have to have special training, and they're limited on what they can do.

But I would say of litigation that I've been involved in, that's one of the cases that's a landmark. It really changed the direction of the law and the direction of the practice of medicine. And ever since the Chalmers-Francis v. Nelson case, the specialty of anesthesiology has flowered and bloomed. It made that specialty much more attractive to medical students, once it was definitely settled and was a matter of law that that was part of the practice of medicine.

Chall: That's a complicated business right now, anesthesiology.

Hassard: Yes, it is.

Chall: It's not just a matter of putting a thing over your nose any more.

Hassard: That's correct, that's correct.

Chall: Okay, that was a good one. Now I have one that's a little different. This is Joseph Harting--

Harting v. Cebrian: A Poor Race Horse

Hassard: Harting v. Cebrian. That had to do with a Kentucky Derby horse. [laughter] No, that is not a landmark case.

Chall: No, but it must have been fun.

Hassard: It was in a way, but it really doesn't deserve a place in the Bancroft Library. [laughs] Except that the Cebrian family is still one of the early Spanish grant families in California. The Cebrian's Spanish grant was in, I guess it's in Santa Barbara County. I know where it is; it's located between Bakersfield and Santa Maria. It was a huge ranch, measured leagues by leagues. And the Cebrian family had that Spanish grant as recently as the 1930s, or close thereto. One of the Cebrians, I can't remember now whether it was Ralph or Edward, I think it was Edward.

Chall: This case was with Edward.

Hassard: Yes, it was Edward. Ralph and Edward were brothers. Anyhow, Edward Cebrian became very much interested in thoroughbred horse racing, and he owned one or more horses. He bought a horse in Kentucky from a man named Chinn, I think it was.

Chall: Yes, it was. Philip Chinn.

Hassard: Yes, it was supposed to be a Kentucky Derby-caliber horse, and it turned out the horse wasn't very good. The net result was Cebrian sued Chinn and that's the case. We lost it. [chuckles]

Chall: All right. Now we have another one here. This must have to do with insurance. Mervyl Moriarty--

Moriarty v. California Western States Life Insurance Company

Hassard: Moriarty v. California Western States Life Insurance Company. No, that was just an ordinary case, I think. We represented California Western States Life in the San Francisco area for many, many years. They didn't have much litigation, but once in a while they'd have a life insurance dispute, and that's what this was. Mrs. Moriarty was the widow. Her husband bought a life insurance policy from Cal Western States, and within a year or so, he committed suicide. The policy had a suicide exclusion. She retained a lawyer and brought suit, and we defended. We lost in the trial court and we won in the court of appeal. But it doesn't have any legal principles or anything of public interest in it.

Chall: As I say, I picked up some that I thought looked interesting. In fact, that one, I think, went to the supreme court, and I noted that "Hassard asked that the court not hear the case."

Hassard: Well, yes. We won in the court of appeal; we didn't want the supreme court to hear it. We were happy with our victory.

Vincent Hallinan: Preeminent Plaintiff's Attorney

Chall: Now I don't really know about this one except that I was interested in the fact that among the appellate attorneys were Vincent Hallinan and Emmet Burns, and so I thought that I would ask you about that. This was Agnes Fitzpatrick and Henry John Fitzpatrick, Minor v. The Fidelity and Casualty Company of New York. And that might not be important, except that I want you to tell me about the Hallinans.

Hassard: That case doesn't ring a bell.

Chall: It's in volume 64, number 9425, and it was 1933. [reads] "Agnes Fitzpatrick and Henry John Fitzpatrick, a minor, versus the Fidelity and Casualty Company of New York, George W. Goodall, Inc.", etc. There were a whole lot of "Doe"s as defendants.

Hassard: Yes.

Chall: The appellate attorneys were Vincent Hallinan and Emmet R. Burns. And for the defense was Hadsall Sweet--

Hassard: Hadsall Sweet Ingalls & Lamb.

Chall: --Hadsall Sweet Ingalls & Lamb, and Bronson Bronson & Slaven, and Hartley Peart. That's quite an array of attorneys.

Hassard: Well, no. In those days both the Hadsall-Sweet office and Bronson's office were small compared to what they are now, but they were insurance defense attorneys, as was Hartley Peart. So that would be a logical lineup of three different lawyers representing--we represented Fidelity, is my recollection at the time. But I don't remember the case. I do remember Vincent Hallinan, of course.

Chall: Yes, tell me about--I imagine he's been an attorney around here for a long time.

Hassard: Oh, yes, he's ninety-some years; he's close to one hundred. He was a well-known lawyer when I finished law school. He grew up in the Mission District here in San Francisco, and his parents were extremely poor. This is how I've heard him tell his story. He sold newspapers on the streetcorner as a little child, to get a few nickels so that they could buy bread. He developed an extremely left wing approach towards life. That sometimes happens with a childhood that's that way.

He became a lawyer and he became a plaintiff's personal injury lawyer. His technique in the courtroom was very effective. He was perpetual motion. He was always talking, always on the move, and always flailing his arms. I remember that. [laughs] He didn't always make sense, and he wasn't always logical, but the sheer power of perpetual motion more than often caused him to be successful.

In the 1930s, if one were to ask who was the preeminent plaintiff's lawyer in San Francisco, there'd be two names immediately mentioned: George Ford and Vincent Hallinan. They were entirely different types of temperament and persons; they had nothing in common, but they were the two most successful plaintiff's lawyers.

As time went by, Vincent Hallinan became an out-and-out Communist, no bones about it, and he became extremely rich. Sort of a contradiction. [laughs] He invested his legal earnings in the '30s, '40s and '50s in San Francisco real estate, and he did it at exactly the right time. He owns a flock of apartment houses, and just how much real estate he now owns I don't know, but he did own an awful lot. And the richer he became, the more radical he became.

Chall: An interesting man.

Hassard: A very interesting man.

Chall: So you did know him.

Hassard: Not well, but I knew him. We had several cases against him. I do not remember that one. The one I remember the most was against a doctor.

Chall: Well, tell me about that, then.

Sims v. **Weeks**: The Good Samaritan Issue

Hassard: Well, a surgeon in San Francisco had a patient who was recovering from surgery in a hospital in San Mateo County. He went to visit this patient one day and while he was there, a mother brought in a young child with a broken arm. And at that particular time there happened to be no other physician in the hospital. So he was asked if he would give the child first aid, and so he did. He set the arm, set the fracture, and put it in a splint. He asked the mother, "Who is your doctor?" and she gave him the name of a physician in San Mateo. He said, "Take this child to your physician tomorrow for sure. This is only temporary." Well, she didn't. After a few weeks, the child suffered, and finally she did go, but it was way too late. The arm had not been fully set, the fracture had not been replaced, but it had gone too far to do anything about it, so the child had a permanently crippled arm.

In due course of time, Vincent Hallinan filed a lawsuit for malpractice against the surgeon. The case was tried in San Mateo Superior Court, Hartley Peart represented the surgeon, and Vincent Hallinan--it was tried just before I came into the office in '34. It was still in process when I was there. So while a lot of it's hearsay, it's current hearsay.

In any event, this surgeon was so arrogant--and I later knew him, and he was an arrogant person, a good surgeon, but one of these people who knew all about everything--and he was absolutely outraged that anybody would dare sue him. I was told that during court recesses, when everybody would go out in the corridors, including the jury, he'd pace up and down the corridor cursing Hallinan in as loud a voice as he could, with vile language, in the hearing of the jury. Hartley couldn't stop him. He kept doing it anyhow. He was told not to. And the jury came in with a verdict in favor of Hallinan's child, which was a terribly wrong verdict, but it was brought on by his temperament.

Anyhow, as the story spread around the United States in the medical profession, it became a case in which a "good samaritan" got sued and got a verdict against him, unfairly, and no physician in his right mind should ever offer to help any stranger out again--totally misconstrued, because nobody knew about this pacing up and down the corridor stuff. But it became the folklore of the medical profession.

The case is very much like the recent one in San Francisco, the taxi driver who caught a thief by pinning him against the wall, and the thief brings suit and the jury awards him damages because the taxi driver hit him too hard. Things like that create a folklore is about the only way I can say it.

Chall: And also, it changes people's behaviors.

Hassard: Well, in subsequent years there have been "good samaritan" statutes enacted in a lot of states. I was involved in the first one here in California; I wrote the thing, and a lot we did through the legislature that gives relief.

Chall: To the--?

Hassard: To the "good samaritans." Most states have adopted them. They should have been unnecessary, because the result that occurred in Vincent Hallinan's lawsuit would never have occurred if that damn surgeon hadn't been such a fool.

Annie B. Johnston v. Black Co.: Liability

Chall: Yes, the personalities get involved. Here's another one, I have no idea whether it's significant. This one had something to do with the fluoroscopic table, whether she fell on it or what--. It was Annie B. Johnston.

Hassard: Yes, I remember the case. It was a case against a radiologist down in Palo Alto, in the days when fluoroscopes were used. If you used the old-fashioned fluoroscope, you stood with your back or your chest, as the case may be, against it. Some of them were on an axle, and the physician could then turn them down, so the patient was lying flat. This particular--Powers, I think, was the doctor's name.

Chall: Yes, it was R. A. Powers and a few other people.

Hassard: Powers was the radiologist. Anyhow, he put this woman on the fluoroscope, turned it down to fluoroscope her, and a bolt crystallized underneath, in the underpinning, and the fluoroscope went down like that, flat on the floor, and threw her forward, threw her head forward, and she hit the corner of the room--bang!--in the head, and she was badly injured. I don't remember much more about the case except that again, it didn't involve anything of public interest. Basically, the legal issue was to what extent is the operator of an instrument liable for a defect in it that is not obvious?

Chall: That he had no control over.

Hassard: No control over, yes.

Chall: Do you know how the case was decided in the supreme court and is it now a settled issue?

Hassard: I don't recall the outcome of the case, but the legal issue is now settled.

Determining the Merits of a Case Against Physicians

Chall: I was wondering over the course of time you receive requests to, I guess, represent many doctors--

Hassard: Yes.

Chall: But some doctors might not have had a case that you could consider worth taking up to trial, or you might have felt maybe they were negligent, or maybe were at fault. Would you always take the case that the doctors brought you, or would you make a choice?

Hassard: No, you always take the case. For many years, and it's still true in California, at least, through the county medical societies, we've had what we call review committees, a committee made up of physicians, members of the society in various phases of practice. And whenever any physician in that particular county is sued, the case is referred to that committee to evaluate medically--not legally, but medically. Was there bad practice here or not? And once in a while the committee will say yes. And in those cases, you settle. You defend every physician, but you don't necessarily defend him or her to the ultimate defense if a body of his or her peers has said, "No, this isn't a good case."

Now we've also obtained legislation many years ago to provide that the records of the proceedings of that type of a committee cannot be subpoenaed and are not subject to discovery. That has been taken to the courts, and the California Supreme Court has upheld that type of committee function and its confidentiality, stating flatly that if the proceedings could be opened up, there'd never be another committee meeting.

Chall: So you think that works pretty well to determine--?

Hassard: By and large, I'd say it works very well. Like any other process, there can be breakdowns from time to time.

Chall: So you're not likely to take a case into court that you couldn't win.

Hassard: Try not to, let's put it that way.

The California Medical Association

Chall: Well, actually, those are the only cases that I took notes on last week. Maybe from time to time I can spin through some of those journals and we'll find some other exciting cases. But in the meantime, I wanted to know a little about The California Medical Association--something about the structure. I read about council and delegates, but I don't really know what each term means.

The Organizational Structure

Hassard: All right. The term House of Delegates is used by the American Medical Association and American Bar Association. It's the equivalent of Congress or a legislature; it's basically the legislative body of the particular association. It functions like a legislature in a rural state in the sense that it meets very seldom, usually once a year. It's made up of representatives from all parts of the area that the association covers.

Chall: Are the delegates elected to represent Alameda County and San Francisco County and--?

Hassard: Yes, they are selected or elected to represent the various county units. In most counties they are elected; in some counties they may be appointed. It's up to the county. But in most of them, they are elected. And then their function is to set policies for the association, and to elect the officers of the association. Now, the council, they've changed the name, by the way, just last year from council, which is the historic medical way of terming, to the board of trustees. It's a board of directors. But again, this goes back to the nineteenth century, the terminology for medical organizations was established, the house of delegates for the legislative, and council would normally be a board of directors. But gradually, that's been changed by most of the associations to board of trustees.

California Medical Association, Past Presidents' Luncheon, March 13, 1992, Anaheim, California. Back row (left to right): Bob Elsner (EVP), Robert Burnett, M.D., John G. Morrison, M.D., William G. Plested II, M.D., Stan A. Moore, M.D. Middle row: Clarence S. Avery, M.D., E. Kash Rose, M.D., Warren L. Bostick, M.D., Ralph C. Teall, M.D., Joseph F. Boyle, M.D., Gladden V. Elliott, M.D. Front row: Ralph L. Milliken, M.D., Charles W. Plows, M.D., Tom Elmendorf, M.D., Carl Goetsch, M.D., C. John Tupper, M.D., Mr. Howard Hassard, Malcolm C. Todd, M.D.

Chall: And they're elected by the--

Hassard: House of Delegates, yes.

Chall: --in annual meetings.

Hassard: Yes.

Chall: Is the president also the CEO these days? Like [Morris] Fishbein?

Hassard: No, that's changed, too. Again, it depends on the size. In the American Medical Association and in the major state associations, the chief executive officer is maybe a physician--in the AMA he is--or may not be a physician. He is a manager, who manages the business affairs. In California it's a layman, a nonphysician.

Basically, that became a necessity because the work involved in managing the association has become so much more intense and so much greater in volume than it used to be. In fact, I was the last part-time CEO of the California Medical Association. That was a long time ago.

Chall: Yes. We'll take that up later, and that was later in your career here. Well, I was interested in the philosophy of the doctors who were the leaders. I mean, were the leaders leaders? Were the men who represented the leadership on the council, were they in fact leaders?

Hassard: Well, just as is the case with the United States of America, it has its ups and its downs. The line is not a straight line. The curve goes up and then it goes down; it has peaks and valleys. In some periods of time in the last, say since the mid-thirties, the California Medical Association has had first-class, top-notch leadership, some very famous people, by the way. I can name several right off the bat: two were Ray Lyman Wilber, his son, Dwight Wilber; Dwight Murray of Napa. They both [both Wilbers] were presidents of the AMA at one time or another. Dwight Murray of Napa, John W. Cline of San Francisco, well, that's enough to give you. And at other times, leadership has been mediocre or pretty bum.

Chall: It depends who's rising to the top?

Hassard: It depends on a lot of things. You can't put your finger on any single factor.

Chall: I suppose it would depend on who wants to be there, who wants to accept these responsibilities.

Hassard: That's part of it, but a lot of people want to be there who aren't capable. It also depends on the times, the environment; it also depends on the character of the individual involved. One name that I thought of and I rejected and didn't mention to you--I'll describe him for you. A brilliant man, a tremendous intellect, a marvelous speaker, William Jennings Bryan-type, very personable, but an extreme erratic individual. He lacked a governor. His engine would race. So I rejected and didn't name him.

Chall: But was he once the president? He was elected to this position?

Hassard: Yes. They're one-year terms.

Chall: Yes, I noticed they were one-year terms. That keeps things under control pretty well, doesn't it?

Hassard: Yes.

Chall: So that was a tough year, I bet.

Hassard: Yes, it was. [chuckles]

Chall: Is there a lot of politics with respect to getting into the council or up there?

Hassard: Oh, sure, sure. Physicians are human beings, they behave like human beings, and their organizations operate. It's no different than the League of Women Voters or the American Federation of Labor or what have you.

Chall: They really fight for these positions, or they campaign?

Hassard: They campaign, yes.

Chall: So some of that occasionally must get rather heated.

Hassard: Sometimes.

Chall: I'm speculating that it might get heated at a time when doctors are concerned with compulsory insurance, or the Kaiser--.

Hassard: Well, or malpractice. And again, they're human beings. Events that threaten their livelihood get them all steamed up. Government medicine gets them all steamed up because it threatens their livelihood. It's going on today.

The Unbelievable Changes in Medical Practice: Technology and Costs

Hassard: --It's just so different than anything that came before. From the discovery of penicillin onward, the practice of medicine and surgery has revolutionized periodically; I don't know how often, maybe once every five years or something. The life expectancy of all of us has increased dramatically in the last few decades, so we are living longer. We are living longer because of medical technology, and the more the technology helps people to continue to live and to live longer, the more the cost of medical care skyrockets, and there's no way to stop. The only way you can possibly stop is the solution that Oregon is trying to put into effect, which in my opinion won't work, and that is, let people die; don't take care of them. Decide on what things are going to be available, and if they're not within the availability group--.

I don't think the public in this world is going to accept that. If it's not accepted, there's no alternate. The cost of medical care is going to continue to go up, up, up, up. So are the quality of our lives and the duration of our lives. The changes in medicine in my time are just utterly unbelievable.

Chall: And you feel part of this is due to technology?

Hassard: All of it, not part. All. In the 1930s, the charge for a hospital bed for a day, in the best hospitals in the country, was six dollars. Six. When Blue Cross first started, the premium was three cents a day, ninety cents a month.

Chall: That's hard to grasp.

Hassard: It is very difficult to grasp, but you have to understand, when I started practicing law in 1934, a bed in Stanford hospital, which cost six dollars a day, consisted of a bed, three lousy meals, and a nurse poking her head in once in a while to take your temperature, period. The hospital didn't have anything else. Now it costs you well over one thousand dollars a day for that same bed, except you have a bunch of nurses, you have diagnostic equipment that costs millions of dollars, that can image your whole body, anything inside or out. You have antibiotic medications that were unheard of or unthinkable in the 1930s. I can go on and on and on.

Cost Containment: The Impossible Dream

Chall: And there seems to be no reduction per unit cost, as there is in certain manufacturing industries.

Hassard: It's the other way around.

Chall: It just seems--

Hassard: Wait a minute. Medicine is not a business, and people seem utterly unable to grasp that fact. Economists, for example. They can't seem to get it through their thick heads that their nice little rules for trade and commerce don't apply to a person who's sick in bed. The economy of size, it's the other way around in medicine. The bigger the size, the more the cost.

Chall: Yet some hospitals are growing and then, like the Summit in Oakland, they have finally taken three major hospitals and merged them.

Hassard: Oh, yes, "Pill Hill."

Chall: "Pill Hill." Whether that's going to be economical or not, that's hard to say.

Hassard: No, it won't. I can tell you it won't. It'll be a better product for the public. People will gain from it and their care, but the cost, no. The costs will go up, they won't go down.

Chall: And why would the costs go up?

Hassard: Because the bigger you are, the more ability to have some of these very, very, very expensive devices and very, very, very expensive, skilled people. The bigger the pot, the more it can afford the best care for the public. And the more the public gets the best care, the more that pot's going to be used.

Chall: It's hard to grasp that concept.

Hassard: It's very hard to grasp. And the medical profession, and I'd say in particular the hospital administrators, has been utterly unable to get the point across to the public. I've heard it said, I've read articles, but nobody pays any attention to it. For every one that tells you like it is, there are ten or twenty who yell and scream bloody murder that the prices are too high, the costs are too great, we've got to bring the prices down. But then they utterly ignore the fact that they don't say a damn word about chloroforming people. They can bring costs down by chloroforming everybody over eighty. Sure. Snuff me out, and that's going to save--. Well, eighty years is as long as a person should be allowed to live.

Chall: Oh, well, now we don't accept that, do we? [laughter]

Hassard: Well, I have no choice; I'm over it. But that's the only way you're going to contain costs in medical care. Or have some more riots, some real big riots, and break all of the x-ray machines, break all the imaging machines, break all the technology and go back to savagery.

Chall: But let's just look at the "Pill Hill" case, for example. If those three merged hospitals have one imaging machine, the MRI [Magnetic Resonance Imaging], and they have one of another kind. And all of the patients use that one--

Hassard: That'll help.

Chall: --instead of the three hospitals each having its own, which is what probably was already taking place, there's a cap. But is that a sufficient cap?

Hassard: No. It's a cap in one direction. But that imaging machine may be used four times as often as the other three. So sooner or later you'll have to get a second one and sooner or later--you'll have much more volume. It's the nature of things. We're all the same; we don't differ. When we are ill or injured, no matter what strata of society we are in or anything else, we want the best care available, and we demand it. Everybody does. And everybody's right. But to fill that demand means that everything has to cost more, and the demand is limitless.

Health Care for Everyone?

Chall: What happens, in your mind, to the people who can't afford that, the one thousand dollars a day plus all the other costs that go into a hospital? They want the best care and they should have it, if everybody else has it. That seems to be the major problem today; how are we going to pay that?

Hassard: That's right. And it is the major problem. Those that think they can avoid the problem by reducing the thousand dollar cost are whistling Dixie. It just won't work, unless you go to chloroforming everybody, say, over sixty. The present methods of paying for it leave one great big gap, and that's what I think the argument's really all about.

Chall: Yes, that's true.

Hassard: People that are able to purchase insurance, adequate insurance, get that thousand dollars a day. You'd be amazed at some of the bills insurance companies pay these days. There's nothing unusual about having half-a-million dollars paid to one patient. Blue Shield does it all the time. Second is government, through Medicare and Medicaid. And the third is the great big gap, people who have not enough money, and don't fall in either of those two categories. Something's got to be done, short of chloroforming them. [laughter]

Chall: But if they're thirty-five years old--. You're talking of chloroforming the elders. What about the youngsters?

Hassard: Well, I'm just starting that way.

Chall: We'll see if we can solve this problem as we go along. We'll talk about it more, but I know that the problem is great. Many companies are cutting back on the health benefits they give their employees.

Hassard: I know they are.

The CMA's Insurance Plans, 1935 and 1939

Chall: During the thirties, when the CMA was concerned with health insurance, there was the controversy between the compulsory and the voluntary.

Hassard: Yes.

Chall: The CMA first decided they would go with the compulsory--

Hassard: That's right.

Chall: --and so the committee--

Hassard: Committee of Six.

Chall: Yes, the Committee of Six, about half of whom didn't believe in compulsory health insurance, it seems. [laughter]

Hassard: No, that's correct.

Chall: From what I read in your oral history with Mimi, this was kind of an interesting committee. You came out with a report which was almost doomed to be unacceptable.

Hassard: It was totally unacceptable to the world and the whole--. [laughs] Well, Professor Canning at Stanford was retained by the CMA as the economist to help the committee, and I was thrown in as the lawyer, as I explained earlier, because Hartley Peart was unacceptable to them. [laughs] And Canning and I, between us, wrote the language and the legislation that evolved. We had our instructions, and they were crystal clear. "Protect the doctors." That was normal; that's human, see. So we protected the doctors.

Chall: Even though you built into it--it was billed as a compulsory health insurance. But if you also had those instructions--

Hassard: Yes, we had that, but--. We had to have a compulsory health insurance bill, and we had to protect the doctors. That was easy, and we did it. And they're doing it today. CMA now has what they call "Affordable Basic Care--ABC." They have a bill in the legislature and they have an initiative petition that they're getting the signatures for verified. It's almost word-for-word what we did in 1935.

Chall: Is that right?

Hassard: Yes. It's amazing, the comparison. They're going to cover the uninsured, but they're going to protect the doctors.

Chall: In what way do they protect the doctors? Explain that to me.

Hassard: They protect them in that they protect the ability of the doctors to set their own fees. They protect them in the ability of the doctors to collect their own fees. They do it just the way Canning and I did it in 1935. [laughs]

Chall: I see. Fee-for-service.

Hassard: That's the only way you can do it. If they decided to have a compulsory legal insurance, and the only way I could get paid was through a government agency, and I had anything to do with drawing the legislation, you're damn right it would protect the lawyers. [laughs]

Chall: How is this going to benefit those for whom it's supposed to benefit?

Hassard: Oh, it will benefit them, but it will be more expensive for the rest. And as a result, just like in 1935, everybody will be against it. They already are.

Chall: So that's not our solution, then.

Hassard: No. Well, I think that we came up with--I'm obviously prejudiced, but I think in 1939 we came up with the right solution, a voluntary system, but one in which the providers of service take the risk. And that's the key part. Who's at risk? If you put the government at risk--that's the public, generally--it's not going to be selling; people won't buy it. If you put yourself at risk, then the public has the opposite reaction. They think, "fine."

Chall: But in 1939, when you put the doctors at risk--

Hassard: They put themselves at risk.

Chall: They put themselves at a great risk, because you didn't set the right fee.

Hassard: That's correct. They didn't realize how great the risk was, but they did it with their eyes wide open, that much I know.

Chall: So again, your claim is that if it's done through a proper insurance premium that you would hope it would work.

Hassard: Yes.

Alameda County's Hospital Prepayment Plan: The Origin of Blue Cross, 1930s

Chall: In the 1930s, Alameda County created its own hospital prepayment plan, because the CMA refused to do so. I think you named three doctors: George Reinle, William Donald, and Earl Mitchell, who then established what we now would call Blue Cross.

Hassard: Yes. Yes, it is called Blue Cross. That is Blue Cross.

Chall: That was based on something they knew of in Texas?

Hassard: That's correct.

Chall: Why would these three doctors have been able to do that in Alameda County, whereas the entire CMA said no to them?

Hassard: Well, the entire CMA didn't say no. It was a part of the CMA said no, and a part was very much in favor with what they were doing. Of course they took risk. Well, the concept that's called Blue Cross started at Baylor University in Texas. It's where the "three cents a day" came from, by the way.

At Baylor University in the late 1920s, the university hospital was broke and prospects were bad. Several individuals--Dr. Justin Ford Kimball, Rufus Rorem, and others--devised this revolutionary idea of asking the people of the community, of Dallas, Fort Worth and thereabouts, to contribute three cents a day to a hospital prepayment fund. And then if they needed hospitalization, it would be for free, and the hospital would recover its cost from this fund raised by the three cents a day. That was the beginning of what's now known as Blue Cross.

The physicians in California heard about it through the grapevine and those in Alameda County. George Reinle and Earl Mitchell were the trustees of Merritt Hospital; that's why they were so interested. Bill Donald was the physician for the University of California. He ran the hospital there.

Chall: Cowell.

Hassard: Yes, Cowell. But in the early '30s, even that idea, the three cent a day idea, was considered revolutionary by some. Now the defeat in 1933 of the proposal of the House of Delegates, the CMA, to support this new Blue Cross concept, was mostly by those doctors who felt that things were so bad that government had to intervene. They were the people that two years later were the majority that voted in favor of the CMA seeking compulsory health insurance. It was basically a battle between voluntary versus compulsory. And the compulsory people blocked the voluntary approach in '33, then they gained a compulsory approach in '35. They were rejected overwhelmingly in '36, and then in '38 they went back to the voluntary approach, and that's when Blue Shield emerged. Peter Grant--

Chall: He has all that?

Hassard: Oh, he's got a thousand pages of it. [laughter]

Chall: Well, it's a really interesting matter here. Alameda County's generally been--I don't about it then--but more of a democratic, let's say Democratic Party area; a lot of labor people in Alameda County. And I wondered if that would account for the innovation.

Hassard: In the 1930s in medicine, no. It did account in other areas of the body politic, definitely. But as far as medical care was concerned, it was not a question of the Democrats being on one side and the Republicans on another. The split was basically between those that were convinced that governments could do a lousier job than anybody else [laughs] and those that were convinced that times were desperate that they had to turn to government.

Chall: Those were the days when people were turning to government. So there must have been a lot of tension in those meetings, to get the vote.

Hassard: There was. You know, they were talking about bread and butter.

Chall: People felt strongly on each side.

Hassard: It's so difficult to get back into that time frame. In San Francisco, when I started practicing law in 1934, there were practicing physicians that supplemented their meager or nonexistent incomes by moonlighting as taxi drivers. Now can you today conceive of going out and hailing a taxi cab and finding that the driver is a surgeon?

Chall: No, of course not.

Hassard: Well, you could then.

Chall: Now you might think he's a Ph.D. in some field, but it's the same thing.

Hassard: Well, right. Same thing. They were starving.

Chall: So these were self-help measures, of course.

Hassard: Of course they were.

The Effects of the High Cost of Medical Care on the Physicians

Chall: And now in a way they're consumer-help measures that we're trying out. The doctors are doing all right, but a lot of the people aren't. Isn't that the main issue here?

Hassard: Doctors are not doing all right.

Chall: They're not?

Hassard: No. It's spotty. There are a few that are doing fine, but the days when a physician could put in his ten or twelve years of study and then settle somewhere and rent an office and hang out a sign and immediately earn a good living, are gone. Again, it's a different situation than fifty years ago, but the bottom line is basically the same.

Chall: How do you account for that?

Hassard: Technology, cost. Again, this is a common misconception that I read all the time. The rapid increase in the overall cost of medical care isn't something that is an automatic benefit to the individual practicing physician. To many of them, it's a disaster. In the first place, of every dollar of medical care costs, only 20 percent goes to physicians. Of that 20 percent, the division within medicine as a whole is far from equitable. Specialists in the dramatic things such as heart surgery, to use an example, are really grossly overpaid by a willing public as versus, say, the hard-working pediatrician, who spends twelve hours a day seeing little children and taking care of hundreds of young lives, who gets maybe one-twentieth of that. So to assume, as I've seen in article after article, that you can lump the beneficiary of the costs of medical care into the physicians is just screwy. Their problems today are pretty complicated--for the average physician--the bureaucratic demands for forms, et cetera, is overwhelming.

Well, that drives them into practice in groups like Kaiser. They're doing it more and more because they can't help it.

Chall: Capital costs are handled.

Hassard: And they can't get enough patients on their own to pay for the costs.

Writing the California Physicians Service Bill, 1937-1938

Chall: I think we've covered almost everything on the outline except I wanted you to tell me a little bit about writing the California Physicians Service Bill in the Lick Grill.

Hassard: [laughter] Oh, we didn't write it in the Lick Grill! We met in the Lick Grill, that's true, that's true.

Chall: Did you have your conferences, read bills or whatever? What did you do in the Lick Grill, relax?

Hassard: No, no. They were work sessions. The attendees at the Lick Grill luncheons were two physicians, Dr. T. Henshaw Kelly, who was an obstetrician and at the time was chairman of the Council of the California Medical Association. The other was Alson Kilgore, who was a surgeon, did not hold any office in organized medicine--except he was a delegate to the House of Delegates--an extremely intelligent person, a very thoughtful person, who was the leader of the voluntary group. Alson and his brother Eugene, who was also a physician, but was an internist instead of a surgeon, grew up in China as children of missionaries; their parents were missionaries. So until they came back to the United States and went to university, their whole formative years were in the religious environment--

Chall: Did that bring a special--?

Hassard: --well, doing help for people. Those were the two physicians. Hartley Peart and I were the other two; there were four of us. We went there to discuss how we were going to structure a voluntary health care plan. One problem which seemed insurmountable for a while was that there was no way that the California Medical Association could get together enough money--this is 1937 and '38--to get together enough money to form an insurance company. We would have needed a minimum of $100,000 to qualify, and we would have had to have much more than that to be able to do any volume of business under the law.

There was no way we were going to raise that kind of money, so we had to find some other way to do it. We gradually evolved the service concept, with the physicians taking the risk, so that there would not be insurance because the risk was not in the company. That took many lunches and many hours of discussion back and forth. It didn't come easy.

Chall: No, it wouldn't have. And these two doctors were knowledgeable or interested in it?

Hassard: Both.

Chall: And logical thinkers?

Hassard: Yes, they were both very highly educated individuals, with different backgrounds. Tom Kelly came from Kentucky, across the river from Cincinnati, and Alson from China. They both were very dedicated individuals for the welfare of their patients and the public; neither of them was selfish.

Chall: And so you and Mr. Peart were there to get it down legally, and to figure out a way to do it.

Hassard: It was basically Mr. Peart's responsibility as attorney for the California Medical Association to help get it done.

Chall: How would you and Mr. Peart work together on your angle?

Hassard: I did the work, frankly. [laughs]

Chall: Did you research? I noticed that you indicated that this plan had come from the Northwest?

Hassard: Partially.

Chall: Partially. So that you had something to base it on. Was there anything else going on?[1]

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[1] For detail on the development of the plan see Howard Hassard, Fifty Years in Law and Medicine, pp. 21-41.

BLUE SHIELD
of California

We've Got a Claim
On Excellence!

JANUARY 1989

BLUE MONDAY

FOR AND ABOUT BLUE SHIELD PEOPLE

As California goes, so goes the nation. Our Golden Anniversary marks the start of a movement that extends well beyond the state's borders.

Golden Moment for Prepaid Health Care

On February 2, 1939, something happened in California that would change the way we pay for health care in this country. Blue Shield of California, the nation's first Blue Shield plan, was born under the corporate name of *California Physicians' Service.*

California Physicians' Service was founded by the California Medical Association to bring the state's citizens "quality health care at an affordable price." Before that, health care was considered an uninsurable risk. Most people—doctors, insurers and the general public—considered prepaid medical care an unrealistic possibility.

Attorney Howard "Hap" Hassard, original drafter of our Articles of Incorporation, pioneered the development of prepaid health coverage in California. Hassard continues to serve today as the company's general legal counsel.

All that changed during the Depression. With one-third of the work force unemployed, many patients lost their ability to pay for care.

Proposals for compulsory, government-funded health coverage were hotly debated during the hard times of the 1930s, and most physicians balked at the idea. Only "self-seeking politicians and professional pinks" want government intrusion in the practice of medicine, wrote one of the era's prominent medical society presidents.

By starting the Blue Shield movement, organized medicine found a way to keep health care financing and delivery in the private sector, while meeting the public's demand for affordable health coverage. Our first health plans were offered to the public on March 6, 1939. Coverage for our first group began two months later.

50

FIFTY YEARS
OF CARING FOR
CALIFORNIANS

From the beginning, Blue Shield extended its coverage to segments of the public that might otherwise be ignored by commercial, "for-profit" insurance companies. We provided coverage to senior citizens years before Medicare came along. We set up programs to meet the unique needs of California's logging and tuna fishing industries. Since 1939, we offered continuation coverage for subscribers who lose their eligibility for group benefits, coverage that the California Legislature did not mandate for most groups until 1981.

We were there in the 1940s, when farm workers poured into California from the "Dust Bowl" states to live in the migrant camps of the Central Valley. In 1946, we worked with the California State Grange to

(See page 2

establish the first rural health program in the nation.

During World War II, we were there to provide health care at a fixed cost to workers in California's burgeoning war industry plants. Afterwards, we were there to provide home town medical care for returning World War II veterans, covering people that the Veterans Hospitals were not equipped to handle.

Today, we pay for things undreamed of by our founders. We pay six-figure hospital and medical bills to save the life of a premature newborn, or to give someone a new heart. We lift the financial burden of AIDS, cancer and other catastrophic illnesses. And we are constantly on the lookout for new health care technology that will improve the outcomes and quality of care received by our subscribers.

Blue Shield has changed with the times, and the times have changed Blue Shield. In our first year of operation, 20,000 Californians subscribed and 5,000 physicians joined the revolutionary prepaid health care service plan. Today, we serve 3 million people through Standard Business and the Medicare Part B Program, and we have over 36,000 Physician Members.

In coming weeks, you will be seeing a lot more of the "50 Years of Caring" commemorative logo designed for this year's observance. It will appear on our stationery, newsletters and in our advertising. This spring, each of us will receive a personal copy of the company's Golden Anniversary commemorative booklet. Special events are being planned for March 27th, the date selected for the company-wide celebration of our 50th birthday party. Along with internal celebrations for Blue Shield people, a reception will be held at San Francisco's Davies Hall for major customers and community leaders.

Our 50th birthday is a celebration of a vital human service. It's *your* celebration, too, for all of us are responsible for keeping that legacy alive.

III CALIFORNIA GOVERNMENT, AND THE CALIFORNIA MEDICAL ASSOCIATION

[Interview 3: June 25, 1992] ##

Medi-Cal Issues

The Universal Voluntary Health Insurance Benefits Program

Chall: Let's talk about the CMA's plan for a voluntary health insurance benefits program [1970]. It was a universal voluntary health benefits program. You said a few minutes ago that it really stressed Medi-Cal--

Hassard: No, it was really aimed at Medi-Cal. It was broader than that, but that was its primary thrust. It was aimed at, as I said before, trying to cope with the impossible situation, which still exists today, in which the funding for Medi-Cal is a fixed sum per year in the budget. The demand for Medi-Cal services is flexible depending upon the number of people who qualify for its benefits. And so you have a fixed figure on one side and an unknown on the other. And it just doesn't work.

Our approach was to set up a private non-profit corporation, a business corporation, that the state would give so much money to each year and it [the corporation] would then administer those funds to provide as much care as possible for people that were in need. It would have not touched the employer-financed health insurance plans that we know today. It would have left them alone and left workmen's compensation alone which was not in the disaster it is in now. My memory is not too sharp on the proposal, primarily because it got nowhere in Sacramento.

Chall: You think it got nowhere because the state employees opposed it.

Hassard: No, the state employees opposed it, but also others opposed just the concept of having government funds administered by somebody other than politicians.

Chall: I suppose naturally there would have been a cap. Would doctors and businessmen have been administering it?

Hassard: I don't recall the exact set-up contemplated for the board of directors of the organization. But it was to be a mixture, so that no special interest would be in control. At least, we were, in those days, cognizant of the fact that physicians had to assume some risk. They had to participate on an equal playing field.

Chall: You say, "in those days." Don't physicians think that anymore?

Hassard: Well, many do, but I don't think it's been noticeable in the medical organizations lately.

The CMA Sues Earl Brian, M.D.

Chall: Now at that same time, in 1970, '71, when Roberta Fenlon was the president-elect and then president of the CMA, the CMA sued Earl Brian, who was the director of health care services during the Reagan administration.[1] Can you explain what that suit was all about?

Hassard: The legislature had inserted a provision into the Medi-Cal law that if at any time during a budget year it appeared to the administrator, who was Dr. Earl Brian, that there was a shortage of funds, he had authority to reduce payments to providers--physicians, hospitals, and so forth--for their services, just arbitrarily. And that particular year he thought there was going to be a shortage, so he did reduce the payments. Our lawsuit was for the purpose of testing the constitutionality of requiring physicians and other providers to provide their services for what amounted to a taking by the government without compensation. The power of eminent domain--.

Chall: It seems like a stretch, but I guess--

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[1] Roberta Fenlon Oral History Interview, Conducted 1989 by Gabrielle Morris, Regional Oral History Office, University of California at Berkeley for the California State Archives State Government Oral History Program.

Hassard: Well, it's a form of slavery.

Chall: If somebody took away my wages--

Hassard: You would feel the same way, and you would sue.

Chall: It did go all the way to the supreme court, so it was a basic--[1]

Hassard: Yes, that's right. We won, but it was a Pyrrhic victory because the legislature didn't appropriate any money.

Chall: Just compare that with, let's say, your proposal that we talked about earlier. If the private non-profit organization had recognized that the amount of money that had been given to it by the legislature was insufficient--

Hassard: One of the key provisions in our proposal was that the board of directors of this private corporation would have the ability to adjust the benefit structure to the finances available. See, under your Medi-Cal, or for that matter, under other government programs, the benefit structure is fixed by the law, and you can't change it. It can become an archaic benefit structure. And it's happened under some laws, but you still have to go by it.

I think it's a terrible mistake, at any time, to freeze into the law a certain way of doing things or a certain provision. For example, in the late nineteenth century, suppose the Congress had enacted that every automobile would have to have a buggy whip. [laughter] Buggy whips were essential when horses provided the energy, but not when a gasoline engine did. But there are laws on the books right now, both federal and state, where benefit structures were frozen in decades ago yet now the benefit is no longer utilized because something better has come along.

Chall: And it's very hard to change those laws. You just add to them.

Hassard: You just add to them. That's right.

Chall: Roberta Fenlon really felt that Dr. Brian simply didn't understand that whole scheme of things. He was too young.

Hassard: I wouldn't say that it was because he was too young. I agree with Roberta, but for a different reason. He didn't particularly want to understand the scheme of things. I guess you knew that

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[1] California Medical Association v. Earl W. Brian, 30 Cal. App. 3d 637 (1973).

Roberta Fenlon had been asked to go back to the Social Security Administration back in the mid-sixties to be a consultant in the Social Security Administration in the implementation of Medicare, which Congress had just enacted. And also Medicaid. So she had a clearer and more detailed understanding of both Medicare and Medicaid than most anybody. So she didn't think Earl Brian knew as much as she did.

Chall: She certainly didn't.

Hassard: And she was right that Earl just didn't give a hoot. That wasn't his motivation.

Chall: His motivation was to cut--

Hassard: No.

Chall: What was his motivation, do you think?

Hassard: To do what he really did do, to place himself in a position where he could make a lot of money.

Chall: Say that again, that he could make a lot of money?

Hassard: Not in government, but in getting out of government.

Chall: I see. So he was positioning himself for a career--

Hassard: For Earl Brian.

Chall: What all for money did he do?

Hassard: I forget now. He did a number of things.

Chall: The director of the Department of Health at that time was Spencer Williams. You mentioned to Mimi that you had sat in his office one day and it was about this particular period of time, I think. And he had told you that he could see Medi-Cal running up to one billion dollars a year within the next year--[1]

Hassard: Correct, correct. I can remember it now. I think it was in the late '60s.

Chall: And he was shocked--

Hassard: Shocked.

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[1] Hassard, Fifty Years in Law and Medicine, p. 66.

Chall: As you were shocked. And now--

Hassard: And now it's what at ten or fifteen or twenty or--

Chall: Or maybe more.

Hassard: More. Yes, that's true.

Chall: It's a problem that doesn't change.

Hassard: No, it doesn't.

Chall: It's a recurring problem in every administration, and every year, in every administration.

Hassard: That's correct. And I keep reading articles in various publications to the effect that if the federal government would only establish national health insurance, Canadian style--it isn't only Canadian style--it would save billions of dollars. And that the cost would be "X." Well, the same thing would happen under national health insurance that happened under Medi-Cal and happens under every other government program. The cost estimate would be proven to be about 10 percent of what the actual cost turns out to be. Nobody seems to get that point.

Chall: When Ronald Reagan spoke before the Los Angeles County Medical Association he was, I think, concerned about this problem of the rise in medical costs. He and Dr. Brian had just cut, they had just made the changes. He was, I think, a little concerned that the medical association was opposing these cuts, this regulation of Dr. Brian's.

Hassard: Yes, they were opposing quite vigorously.

The CMA and the Ronald Reagan Administration

Chall: Yes, quite. And he felt that that was too bad because you needed each other, you had to work together. How in other ways did you work with the Reagan administration in this field of health?

Hassard: I have to think. I cannot recall anything different or unusual under the Reagan administration than under previous governors.

Chall: There must be a reason that you were sitting in Spencer Williams' office. I think at that time you may have still been executive director of the CMA.

Hassard: Executive director? I stopped being executive director in July of '67, but I continued to be general counsel. I knew Spencer Williams, and had for some time. I was one of the, probably, team, I guess you would call it, that Reagan established when he was first elected governor to make recommendations to him for various cabinet positions. I was on that team primarily for the Department of Health.

And I remember my first recommendation was Dr. Harold Chope, who was the health officer of San Mateo County. He turned me down flat. He said he didn't want to go to Sacramento. Then through him and others in the area, Spencer Williams, who was an attorney not a doctor, and who was practicing in San Jose--I think he was city attorney at the time--was recommended. I met him and liked him. So I recommended Spencer Williams. And lo and behold, he got the job.

Chall: Did you say he was recommended by others?

Hassard: By other people, yes. I don't remember now precisely, this goes back to 1966.

Chall: It's a long way back. But it's interesting that you would have been placed in this position to be part of that team--

Hassard: Yes. The question you asked me, the general question--. I just don't remember anything other than the Medi-Cal problem, during the Reagan administration, in which there was any unusual activity, except in the field of medical malpractice. And in that field, Reagan as governor was not involved. It was committees of the legislature.

See, Reagan was governor from 1966 till '74. The big crisis in medical malpractice burst upon us the following year during Jerry Brown's first year, 1975. In the early seventies there were committees in both the assembly and the senate that devoted a great deal of time to the subject, and I was active before those committees. But the Reagan administration, _per se_, was not involved.

Chall: The one thing that Reagan did, as I recall, was to sign a law allowing abortions in the state of California--a rather sweeping abortion law, which the CMA had backed.

Hassard: Well, of course, the issue of abortion was as controversial within the CMA as it is in the general public. There are those that are adamantly opposed to it on religious grounds, and then there are others that think it has its place. But the official position taken by the CMA then and now, is that abortion is a personal decision to be made between her physician and the patient. And that it should not be dictated by political, religious, or considerations that are medically irrelevant to the condition of a patient. That's been a consistent position.

Chall: I think that initially when Reagan was governor, he was opposed to it, but he came around.

Hassard: I don't remember. The abortion controversy has always turned me off. I stop listening when people start ranting and raving because they get so emotional, so illogical, and so irrelevant on both sides. Neither side will pay any attention to the other's position. It just annoys me.

Chall: Yes. And it seems the smoother way is to allow it to be a choice between the patient and the physician.

Hassard: Based upon the medical conditions and needs. Abortion is a surgical procedure, and darn it, I don't want the legislature to decide when I'm going to have a surgery. I want a surgeon who knows something about it.

The CMA and the Jerry Brown Administration

Chall: Let's get into your relationship with Jerry Brown.

Hassard: I didn't know I had any. [laughter]

The Medical Malpractice Crisis

Chall: Malpractice was a major issue. Also, I think, there were bills for cost containment for hospitals that, I think, was a very keen issue. We'll take up malpractice first. Eventually things were so bad that Jerry Brown called a--

Hassard: Special session--

Chall: Special session of the legislature to deal with it.

Hassard: That is correct.

Chall: It was requested by the physicians and the hospitals so things were not very good at that time. A crisis, would you say? What was going on?

Hassard: In the early part of 1975, the major insurer of medical malpractice in northern California announced that it was withdrawing from the field because it was losing too much.

Chall: What was the name? Who was that?

Hassard: Argonaut. And the only company that was willing to come in was wanted a 300 percent rate increase. At about the same time, the carrier in southern California announced a 300 to 400 percent rate increase. The increased amounts were beyond the financial ability of many physicians to pay. Fairly soon there were sort of rump organizations of physicians trying to do something about it.

They actually went on strike. First up here in northern California. This was not a union affair, it was not an organization. Groups of physicians just got together and decided that's the only thing they could do. You had it in Alameda County. You had a period of time in 1975 when if you were ill, you wouldn't be able to get a doctor, unless it was an emergency. Just out. The same thing happened in southern California.

The Special Session of the Legislature, 1975

Hassard: When the interruption of services occurred, Governor Brown finally decided--he had resisted a special session for several months--he changed his mind, and called a special session of the legislature to meet the crisis. The doctors returned to work on that basis. There was a long, drawn out legislative inquiry and legislative proposals.

The California Medical Association asked its president, the chairman of its council which is the chairman of its board, and the speaker of the house to take leaves of absence from their practice and to devote full time to the legislation in Sacramento. They did so, and they spent months in Sacramento.

Finally the legislation called MICRA, Medical Injury Compensation Relief Act--everybody knows it by its acronym, MICRA--passed. The governor did not sign it because Rose Bird opposed it. She was not yet on the supreme court, she was working in his office. She wrote a very irate letter to him saying it was a terrible law and it should be vetoed. But he didn't veto it either, he let it become law without his signature.

Chall: He did?

Hassard: Yes. Then he appointed her to the supreme court, as chief justice. You can imagine how that was welcomed by the medical profession of this state.

The Medical Injury Compensation Relief Act, MICRA

Chall: I have AB 491, Peter Behr. Of course, there might have been others.

Hassard: No. It was a special session, and it was Number One.

Chall: There was AB 1xx, [Barry] Keene.

Hassard: That's it. That's it. That's MICRA.

Chall: It restricts pain and suffering awards to $250,000. That was it?

Hassard: That is correct.

Chall: It reduces lawyer contingency fees, tightens the statutes of limitations--

Hassard: That's it.

Chall: Increases the state's policing powers over physicians.

Hassard: Yes. Allows evidence of collateral sources, which is terribly important because many people go to court for relief, compensation for injuries that have already been compensated by workers' comp, or Medi-Cal, or Medicare, or something else.

The Challenges and the Results

Chall: According to my source, the California Trial Lawyers' Association vowed to challenge it in court.

Hassard: They did.

Chall: And what happened?

Hassard: They lost every time. It took ten years, though. There were half a dozen different suits on each one of the subjects that you mentioned. And you didn't mention all of them. There were several more. Each one was challenged. Several of them went to the United States Supreme Court, which refused to hear them. The California Supreme Court in these various cases upheld every provision of MICRA.

Chall: Is it the law now?

Hassard: Yes. If it wasn't the law, you wouldn't be getting any medical attention from anybody.

Chall: What about this figure of $250,000 in 1975? Would that have been raised?

Hassard: No. Why should it be? Do you measure pain by dollars?

Chall: Everything else gets indexed up. I thought that might have been.

Hassard: Why should pain get--

Chall: Maybe it costs more to be in pain these days.

Hassard: No, it doesn't. If it costs more, you're entitled to recover the cost, and the increased cost. Yes. There is no limitation on reimbursement for actual cost. If you're going to have to be in a nursing home for the rest of your life, and you have a life expectancy of twenty years, you're entitled to get that total cost. The only thing that has a cap on it, is the intangible award of money for just the hell of it.

Chall: Pain and suffering.

Hassard: Whether there's any pain or suffering involved or not. It's going to be challenged heavily next year. We're gearing up.

Chall: Who is challenging it?

Hassard: The trial lawyers. Plaintiffs' lawyers. It relates rather definitely to their incomes.

Chall: Definitely. But it's had a fifteen year or more life span.

Hassard: That's right. What I'm going to say now is in general terms, and I'm not able off the top of my head to quote you figures, but in the mid-1970s, after MICRA was enacted by the legislature, premium rates in California for medical malpractice, for the various specialties, were the highest in the country. Since then, Florida, New York, Michigan, at least those three, and several other states have higher premium rates than California does. The level of cost in California has gone up with inflation. But it has not exceeded inflation. The frequency has remained rather constant, and the cost per claim has remained fairly constant. In other states, they have had skyrocketing inflation in costs. Our MICRA is the most comprehensive tort reform legislation that has been enacted so far. It has been vital to the practice of medicine in this state.

Chall: So you see this as being challenged this year?

Hassard: Next year.

Chall: In the state or in--

Hassard: In the state. No, the federal government, both in the Senate and in the House of Representatives and in the White House, are considering federal legislation along the lines of MICRA. Now whether it will ever get anywhere in the Congress, I don't know.

Containing Hospital Costs

Chall: I think there was other legislation either before or after dealing with medical matters--I think hospital containment costs--Barry Keene bills. In 1976, there was a Keene bill dealing with hospitals--they have to seek certification for expenditures.

Hassard: That was a federal law, just being implemented in California.

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Hassard: A hospital could not be built or reconstructed or enlarged without a certificate of need. But that was a federal statute. Since repealed.

Chall: Since repealed?

Hassard: Yes.

Chall: So there is no cap on hospital enlargement, meaning nothing to prevent them from doing it except the market?

Hassard: Money. That's right.

Chall: I have two from Barry Keene with respect to limits for hospitals' growth. There must have been something in the federal regulations that required the state to deal with this in some way.

Hassard: That's a certificate of need program that I just mentioned.

Chall: There was a Howard Berman bill, AB 1050, which was supported by Governor Brown, to bring the state into conformity with federal health planning laws, so that California wouldn't lose $600 million in federal funds.

Hassard: That's again certificate of need.

Chall: The industry wrote the alternative AB 314, and got assemblyman Curtis Tucker to introduce it, and [AB] 1050 was defeated.

Hassard: I was wondering what was the source of your information?

Chall: That was the newspaper article. I didn't bring them with me.[1]

Hassard: Because you're not ringing a bell with me.

Effective Lobbying

Chall: That's all right. The writer was quoting from some of the legislators concerned about the lobbying activities of the CMA. They felt begrudgingly that the CMA had an exceptionally fine lobbyist. I think it was Jay Michael at that time.

Hassard: I forget when he started.

Chall: This was in the seventies and early 1980--

Hassard: He started some time in the seventies.

Chall: The president of the California Hospital Association, Paul Ward was also very active.

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[1] John Jacobs, "The Health Industry's Strong Voice in the Capitol," San Francisco Sunday Examiner and Chronicle, August 24, 1980: Section A, p. 9.

Hassard: Yes. Paul was a very good friend of mine. Because he was Pat Brown's chief of staff.

Chall: So they were begrudging the fact that you did a fine lobbying work, and that's why you could defeat a bill like [AB] 1050, and bring in your own bill.

Hassard: The California Medical Association has maintained a lobby in Sacramento since sometime around 1918, continuously. Over the years it has become quite an establishment, and it is as effective as it can be. That's its purpose, is to be effective, is to express the views of medicine. And it is not liked by people that oppose medicine, as you would expect.

Chall: During this period of time, too, the PACs [political action committees] came into being, and that apparently has made a big difference in the way legislation is achieved in one way or another.

Legislators Then and Now

Hassard: I don't think the PACs themselves have caused any change in the way legislation is handled. I think PACs have caused a change, but I think it's been along with other factors. The change that I notice most definitely is the basic attitude of legislators today as compared to, say, forty or fifty years ago.

Chall: How has it changed?

Hassard: Forty or fifty years ago most legislators did not become--this was true of both Congress and the state legislature in Sacramento--legislators as a lifetime career. In California, I would say the majority of people that became senators or assemblymen in Sacramento looked upon it as a stepping stone towards a permanent career in something else. They were interested in government as government. They were more interested in achieving things so that they could get other jobs.

I think Jesse Unruh made more of a change than the PACs. He developed something that the legislature had not had, and it started, I would say, in the sixties and through the seventies. The legislature changed from a part-time job to a full-time job, and a year-round job. They got staff to do their work, which they had not had before. And they got paid a living wage.

Pretty soon, legislators, individually and as a mass, spent more time making sure they kept their jobs for life, so it was more important to get reelected than anything else for them. If it was a lifetime career. So they were more susceptible to the money from PACs than when they were not looking upon reelection as a lifetime career. I think that factor had more to do with PACs, and the impact of PACs, than anything having to do with lobbying *per se*.

I don't think it has been good. I know that there are people that totally disagree with me, but I think that Proposition 140, setting term limits, was a darn good idea.[1] I think it will force legislators now to pay more attention to being legislators than to getting reelected. And I think that that will reduce the impact of PACs.

Chall: That's an interesting proposition that I hadn't considered before. Because they certainly have been influential.

Hassard: Yes. That's because the legislators are so dependent upon money to stay in office. It's actually sort of like pigs in a trough.

Physician-Owned Insurance Companies

Chall: At the time of the malpractice crisis, did some doctors in association set up their own insurance companies?

Hassard: Yes, they are still in existence. They have the majority of the business. Without them, there would probably be no ability to get insurance. There is one here in Oakland, MIEC [Medical Insurance Exchange of California], that was formed by the Alameda-Contra Costa Medical Association. There is one up in Napa, it is headquartered in Napa but it covers all of northern California, called the Doctors' Company. It was started by a pathologist in Richmond. There is one in southern California called Skippy, Southern California Indemnity Exchange, [SCIE], that was formed by the Los Angeles County Medical Association. And there's another one in the central area called NORCAL [Norcal Mutual Insurance Company], that covers San Jose, Sacramento, Stockton, Fresno, and other areas, formed by the county medical associations in those areas. So there are four of them, and they cover most of the physicians in the state.

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[1] Proposition 140, Constitutional Amendment. Term limits for state elected officials and other matters. November, 1990.

As I say, without them, I don't know what doctors would do because almost all liability insurance companies have had such bad experience with professional liability, they're not interested in the field, at any price.

Chall: How are the doctors then able to do this if private insurance companies won't? Do they set rates which they feel they can afford, and make a slight profit on it besides?

Hassard: They try to. One of the reasons that commercial companies are not interested in the field is, we call the "long tail." You do not know how you have actually done in a given year until about ten years later. And that's a long, long time to not know how you're doing. We call them the "bed pan mutuals." [laughter] The "bed pan" mutuals have done well since 1976.

I would say not because they, in general, they do anything different than the commercial insurance companies, except one thing: they know more about the people they're insuring. They know more about the type of medicine that people practice. They're insuring their own colleagues, so they do a much better job than the insurance companies have ever been able to do in making high risks pay more money, or making them take postgraduate education. Generally you can call it policing, but it's--

Chall: It's a peer review then.

Hassard: Peer review, yes. They're able to do it because they know the business. It isn't the insurance business that's important, it's the practice of medicine that's important.

Chall: So that they have been successful?

Hassard: All four of them have been successful so far. Without MICRA, I don't know how they would do, though.

Chall: It's really a problem of the suits that creates this whole insurance problem.

Hassard: Certainly.

Chall: So that MICRA has kept it under control to a large extent.

Hassard: It hasn't stopped suits, they still occur. But they aren't--.

Chall: There were some parts of the country a few years ago where doctors were just closing up their practices.

Hassard: That's right. Florida was one. New York was another. In New York state, to practice obstetrics, my recollection is a few years ago the premium got to be over $100,000 a year. So pretty soon there were very few obstetricians, and then pregnant women had nowhere to go.

Chall: California has at least stabilized.

The Cost of Neonatal Care

Hassard: Yes. We've had our problems, though. One of the acute problems is that science has progressed to the point where if an infant is born, say, prematurely or there have been problems at the birth and the infant was born with malfunctions, they can now be kept alive. They may not live good lives, but they can be kept alive indefinitely, but at the cost of maybe $500,000 to $1,000,000 or a $1,500,000 to keep them alive.

Those cases result in lawsuits still in California and everywhere else, and they're lost. They have to be, or they're settled. And if they're settled, the cost is just outrageous. That type of thing, really, I guess it can only be stopped if we do like some countries do: don't spend any money on research. Don't learn anything, and then we wouldn't be able to keep those babies alive, and they would die, and they would save a $1,000,000. Or chloroform everybody over seventy.

Chall: In the whole matter of this neonatal care that we're talking about here, a few years ago, I think it was during the Reagan administration, the administration required that these infants be kept alive, and it wasn't just a question of what parents or what doctors wanted. It was the law. That created considerable problems within hospitals, certainly within obstetrics.

Hassard: Yes, right. It resulted in many hospitals closing their obstetrical wards.

Chall: That was another reason, then, for closing, besides the malpractice.

Hassard: That's right.

Chall: You said that the cases were lost. How did you mean that they were lost?

Hassard: I meant that in the sense that the defendants lost. And most of them were settled, because it was apparent that for sympathy if for no other reason, a court and a jury were going to find for the plaintiff.

Chall: These are difficult decisions and difficult problems when the government gets into some of these areas.

Hassard: Well, the government really doesn't know what it's doing when it gets into areas, not only in medicine but other areas of expertise.

Containing the Continuing Rise in Medical Costs

Chall: In terms of medical insurance, comprehensive insurance, do you have anything that you want to say about what's happening today in this whole crisis of medical insurance that we keep reading about? It sounds very much like they're proposing just what CMA proposed twenty-some years ago.

Hassard: That's correct. The word crisis isn't quite right at the moment, because there isn't a sudden upheaval as there was in California in 1975. A 300 percent rate increase is substantial, if you've paying so much less. And that isn't happening. But the costs keep rising, and the costs keep rising above the rate of inflation.

There's an added cost overall in the practice of medicine because physicians have learned that they can only keep out of trouble by doing certain things that are unnecessary, but if they don't do them they're running the risk of getting sued. So they do the unnecessary things. They're human beings and they behave like human beings, they protect themselves. So that if there's going to be any overall containment of costs in the provision of medical care, there are various steps that will have to be taken, and one of them would be to stabilize--not eliminate but stabilize--the responsibility for bad outcomes in medical practice.

Halting Research into Advanced Technology

Hassard: I don't think anybody in their right mind proposes to outlaw malpractice suits because they are justified at times. I think the bad baby ones are justified. But the whole field needs to be made more stable. If unnecessary medicine isn't to be practiced, if costs are not to be out of hand, something has to be done about integrating new technology into the overall health care without waste and without utterly outrageous costs.

Some countries have achieved it simply by not spending the money to develop our technology. I don't think you could get a favorable vote in the United States for eliminating the latest technology or the research that produces it. You would have to stop the research if you're going to stop the latest technology.

Physician-Owned Clinics

Chall: The fact that there is all this fine technology, and that doctors want to or feel the need to use it has meant that many doctors are now building or owning little clinics, for the use for example of the imaging machines, the MRIs. Small offices set up and a doctor or a group of doctors might own this machine in a city, and send their patients to it. That has been a controversy within the public and the medical association. I think there was something even in the paper this morning about it.

Hassard: I don't think controversy is the proper word. I think maybe the more accurate way of describing it is what do you do to stabilize that particular field. It's not only MRIs, but all other technological advances that involve expensive machinery. Are you going to regulate it, as was tried with hospital construction under the certificate of need approach that we talked about a little while ago, which was a failure in my opinion. Are you going to try to regulate it that way? Or are you going to try to do some other approach? I don't think that the problem has been carefully thought out yet.

There's no doubt about it that generally in the United States, whatever the new technology may be, we have more of it per capita than other countries do. I think the comparison has been made with Canada--was it MRIs or something else? Where we have hundreds, they have tens. How do you rationally approach the problem so that in the process of stopping one abuse create two more? I haven't seen much of an intelligent effort yet to analyze what it is.

An Example of the Value of Advances in Medical Technology

Hassard: But the advances in medicine are startling. For example, when you first met me a few months ago, last year, I had cataracts in both eyes. I could see, but I couldn't see very clearly. And I couldn't possibly read this letter without glasses. [looks at letter] I had a cataract surgery in my left eye, which was the worst of the two, and it was done one morning, and since then I can now read. I can read a newspaper without glasses, which I hadn't been able to do since I was 45. Ten years ago that operation was a risky one. And there were many failures that didn't work. In a brief ten years, the ophthalmologists of this world, or this country, have so improved their technology that it's now rarely that it doesn't work perfectly. And it works perfectly to a degree that it was thought impossible a few years ago. Now what are they going to do? This costs money. And what are they going to do, stop cataract surgery? Confine old people to having thick-rimmed glasses to read the newspaper? Or--

Chall: Or not seeing at all.

Hassard: Yes.

Chall: Now we wouldn't want to do that. As you say, that's a question. And, of course, the question comes up in many cases of who is going to pay for it. Will Medicare pay for it?

Hassard: That's right.

Chall: As the new technologies come about, Medicare has to keep raising its own standards.

Hassard: It definitely has to. As long as we have a free society and a free country.

Chall: It's an ongoing problem, but it has to be solved in some way, not medically but financially.

Hassard: It has to be a combination, I think. I can't see anything in the future in this country in the costs of medical care except continuous increases in the costs as long as we permit research to go on. I think it's as simple as that. If you go back to witch doctors, the costs can be dramatically reduced, so could the lifespan.

Setting a Balance Between Costs and Technology

Chall: Have you thought about where this balance would be placed? Who would be responsible for the balance, setting the balance?

Hassard: I really can't--. I can state various ways in which the balance could be set, but I don't particularly think that I could advocate any one of them over any other. The consequences are rather foreseeable. If they eliminated support for research in the universities and in the national institutes of health and so forth, you would stop technology from continuing to grow. And that would at least temporarily stabilize costs, pretty much.

But what would happen in the long run, I don't know. That might be the worst thing we could do. We can't tell. I do know that turning everything over to government is not going to solve anything, except that the people will like it because they won't know they're paying taxes.

In England, for example, I've been there quite a few times in the last twenty years--practically everyone there loves the English health service because they think it's free. They don't relate the various taxes they pay--the add-on tax that goes on to everything you buy, the local poll taxes, the high incomes taxes--they're taxed on everything they do, from what they eat to what they wear, where they live and everything. And they don't realize that in all those taxes there is buried deep is the cost of the health system, and they think it's for free. I don't know.

They don't know about some of our technologies, so they don't miss it. Now that's one thing that needs to be understood. If the public isn't informed, it doesn't know what it's missing. Except in the long run, as I guess as it has happened in Russia, they will finally revolt.

Chall: With the markets now going throughout the world in all directions, I'm wondering whether our health technology will also move more overseas than it has.

Hassard: I guess the answer to that is it will wherever they can pay for it.

Chall: Yes, it is a matter of paying?

Hassard: Yes.

Chall: Well, I think that's about all we can cover today.

The Short-Doyle Act, 1955-1957[1]

Chall: We're going to start today with the Short-Doyle Act. When you talked to Mimi, you said that one thing you were particularly pleased to look back upon was your work with the Short-Doyle Act.[2] The Short-Doyle--it's the Mental Health Act. And you said that your work was that of a draftsman.

Hassard: Correct.

Chall: It took two years until this thing went through. First it failed, and then it passed. The first version in 1955, according to Mr. Doyle,[3] Ben Read came to him and said the CMA opposed it, and it probably wouldn't go through. That was correct. It got stopped in the Senate Governmental Efficiency Committee. Why was the CMA opposed to it?

Hassard: It's a long time ago, and I'm not certain of my memory. My recollection is that the first draft did not satisfy the members of the psychiatric community. My recollection is not very clear as to exactly why, but I think it was because the first draft--to put it this way, was too governmentally-oriented. Well, that's just a vague recollection; 1955 was quite a while ago. And actually, as you commented a moment or two ago, my role in Short-Doyle was entirely that of drafting into legislative language the ideas of others.

Chall: That would have been--

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[1] Senator Alan Short and Assemblyman Donald Doyle.

[2] Hassard, Fifty Years in Law and Medicine, p. 107.

[3] Donald Doyle, "An Assemblyman Views Education, Mental Health, and Legislative and Republican Politics," in Education Issues and Planning: 1953-1966, Regional Oral History Office, The Bancroft Library, University of California. p. 61.

Hassard: The field of psychiatry is not something that I'm particularly qualified to know about.

I do remember that after 1955, the CMA's Mental Health Committee, chaired by a physician whose name just escapes me, I'm sorry--

Chall: It will be in the record, and somebody can always find it.

Hassard: That committee developed a variation of the original Short-Doyle legislative proposal that stressed not only local community involvement, but also the matter of I think trying to return mentally ill people to useful lives in their community as soon as possible. And it also proposed rather elaborate provisions for the distribution of state funds based upon community need. The committee pointed out that various communities had different degrees of mental illness, different needs, and that to have a formula that was uniform statewide was completely unfair and really unworkable.

Those were the ground rules, so to speak. As attorney for the California Medical Association, the committee asked me to put into legislative language their thoughts, which I did. And they were then accepted by Senator Short and Mr. Don Doyle, and became the 1957 bill.

My recollection, is that it was heard in committee in both houses of the legislature several times. It was controversial. I recall that there were still some in the psychiatric and psychological communities that thought the stress on local involvement was wrong, that it should be centralized. They were a minority, but they were vocal. I can recall drafting and redrafting [laughs] as the session went on in 1957, to accommodate comments that were made at the committee hearings. The final result was a very complex piece of legislation. But do not ask me to--[laughs]

Chall: No, no. That's all in the record.

Hassard: --to recite from memory, because I can't.

Chall: Yes. Well, that's in the record. It's just worthwhile knowing from your point of view, since we have interviewed both Don Doyle and Portia Bell Hume, and they've discussed it.[1] Now, what was

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[1] Portia Bell Hume, M.D., Mother of Community Mental Health Service, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1973, pp. 59-68.

Dr. Murray's influence? He was the legislative chairman of the CMA at the time.

Hassard: That is correct. Well, Dr. Dwight Murray was a general practitioner in Napa. He was born and raised in Indiana, and received his college and medical education at the University of Indiana. He was a real Hoosier. [laughs] He was a very community-oriented physician. He had a huge practice in the Napa Valley.

He became the chairman of the Committee on Legislation of the California Medical Association in the late 1930s, and he remained as chairman for some twenty years. About that time, he became president of the American Medical Association. He was truly a country doctor.

The Opposition to the Act

Chall: Dr. Hume feels that he was strongly opposed to the Short-Doyle Act, and since he wasn't around in 1957, because he was the president of the AMA, that that, and many other factors, helped its passage.

Hassard: I don't recall that he was strongly opposed. If he was, it would be unusual for me not to have been well aware of it. I do remember and I do know that since the Napa State Hospital was and is located right in his area of practice, and I know that he had many friends on the staff of the Napa State Hospital, and that he attended patients there from time to time, I'm sure he was influenced by the reactions and the attitudes and the points of view of his colleagues who were on the medical staff at Napa State Hospital. He would normally reflect that, but I don't think that was strong. It may have been, but I don't remember it.

Chall: What about the activities of the people who opposed it so strongly, thinking that it was almost like a communist plot? Dr. Hume mentions that these people were very, very vocal in the hearings--

Hassard: [laughs] I remember; that's true.

Chall: --against her and Dr. [Walter] Rappaport.

Hassard: My recollections are maybe somewhat different than either Dr. Hume or Dr. Rappaport, because not being a psychiatrist, I was not personally involved in the debate of opposing philosophies on how to care for the mentally ill. But I do recall, that the Short-Doyle approach of retaining the mentally ill in their own home communities as much as possible, was a new idea. I don't recall that there was any other state that tried it. It was a venture into the unknown, and as such, psychiatrists tended to line up on one side or the other and be very--they get very excited about those things [laughing]. That's my experience with psychiatry.

Chall: But that wouldn't have anything to do with the communist thing?

Hassard: No, I don't recall a communist thing. Maybe it just sailed over my head. But I do remember Dr. Rappaport, because he was one of the leading psychiatrists in the country, I guess, and I do recall Dr. Hume and her vigorous support of the Short-Doyle approach.

Chall: Oh, yes. And you do recall the agitation of those who thought it was communism?

Hassard: I do, but I don't recall a precise nature--

Chall: Did it disturb you?

Hassard: No, it didn't disturb me. I was a working stiff, drafting the legislation. Don Doyle would remember a lot more about it than I do. Don and I are still friends, and we see each other quite frequently.

Chall: Now, it was during this interim study period, then, that you worked out the draft of the legislation that ultimately passed.

Hassard: Yes, on the behest of the California Medical Association committee.

Chall: And then set up the Mental Health Committee in the CMA, I guess with the psychiatrist whose name we don't know--

Hassard: Yes, as chairman. I'm ashamed that I don't remember his name, because I worked closely with him for several years.

Chall: It would be in the CMA material, in the files?

Hassard: Yes.

Chall: Our responsibility is just to leave the clues, if we can't do anything better than that. Dr. Hume says that it came back in

1957 with hardly a word changed. That would not be the way you recall it?

Hassard: No.

Chall: You recall making substantial--

Hassard: Yes. I would think it might be quite true that the concept remained very much the same--

Chall: I see, because it was a community mental health project, concept. And by that time, too, she claims that there were some sixty statewide organizations which were supporting it, so that they had their time to build up some backing for it, too.

Hassard: May well be.

Chall: Did you know Dr. [Walter] Hepner, do you remember him? She said he led this statewide organization.

Hassard: No, I don't recall that name.

Chall: According to Doyle he was a member of Governor Knight's advisory committee on mental health. This Short-Doyle concept, Dr. Hume claimed was really based on some ideas that had come out from Dr. [Frank] Tallman, who was the director of the Department of--I guess it was Mental Health--

Hassard: Yes, he was.

Chall: --during the Warren administration.

Hassard: That is correct.

Chall: And I was wondering whether the CMA still had some feelings about health insurance of any kind, stemming from their attitudes and their activities against the Warren health insurance act. Were there any remnants of this negative attitude, in a sense, toward insurance? Was that part of your reluctance to accept the Short-Doyle at the beginning?

Hassard: No, I don't think so. I think it's entirely separate. The position of the California Medical Association, from 1936 on, was very strong that health insurance should be a voluntary affair, a part of private enterprise, and that government should not be practicing medicine. Now, the Short-Doyle didn't conflict with that at all. In fact, if anything, Short-Doyle lessened the influence of government, because before Short-Doyle, mentally ill were placed in state hospitals, owned, operated, and run by the state. So it was totally governmental.

Under Short-Doyle, as part of the care of the mentally ill remaining in the patient's home community, private involvement increased tremendously.

Chall: Did you then follow this mental health legislation when it went beyond this into the Lanterman-Petris-Short Act?

Hassard: No, not particularly. The Lanterman-Petris-Short approach was at a different angle. It was primarily on a matter of custody, detention, and that sort of thing. And no, I was not involved in it so much.

Chall: And then the follow-up, the Reagan plan to close the hospitals.

Governor Reagan's Interest in State Mental Hospitals

Hassard: Well, I know somewhat about the so-called Reagan plan, because when Ronald Reagan was first elected governor, one of his initial activities was to ask a number of private citizens to serve on committees to investigate and report back on the functioning and the performance of the various administrative activities of the State of California.

There were numerous committees. One of the committees was charged with the responsibility of assessing state hospitals. Dr. Richard Wilbur, who was then an officer of the California Medical Association, was one of the members of that committee. It inspected all the state hospitals, and I remember Dr. Wilbur reporting back to the California Medical Association that most of the state hospitals were in physical disrepair, that some of the kitchens were so dirty and bad that the food was likely to be contaminated; that they were a mess. It would cost a huge amount of money to modernize the state hospitals and bring them up to health standards.

As a direct result of the committee's report, the governor made an effort to do something about the state hospitals. It didn't get very far, is my recollection.

Chall: Okay, and then following that number of years was Jerome Waldie's sort of cradle to the grave service for retarded children and adults. Did the CMA take any action on that, do you recall?

Hassard: I don't recall particularly. The odds are the CMA was against it, if Waldie proposed it. [laughter]

Chall: I see. Well, we do have a nugget of information there.

Hassard: But I don't remember for sure.

IV GROUP HEALTH PRACTICE, MEDICARE, AND OTHER MEDICAL INSURANCE ISSUES

[Interview 4: July 23, 1992] ##

The Controversy Over Group Health Practice

Chall: Regarding the Kaiser Permanente medical establishment, I've heard the controversy over this kind of medical practice characterized as a titanic battle. So, can you think back now that the titanic battle is pretty well finished and has been for quite a while--what was the problem as the CMA and AMA saw it, with the Kaiser project, that kind of medical practice?

Hassard: That is more than Kaiser Permanente. Kaiser was just one of a number of what used to be called group health practices. The first part of this century, the American Medical Association and its constituent state associations, and the local practicing physicians throughout the country, looked upon any form of "closed-panel" practice as being unethical, and hopefully illegal. The basic concern of practicing physicians was that of competition. They feared that group practice of physicians being employed and patients having no freedom of choice, other than the group itself, would put a fee-for-service individually practicing physician ultimately out of business.

The controversy reached a point in the late thirties and early forties where the American Medical Association and its local society, the District of Columbia Medical Association, affirmatively tried to put a federal employee group health practice called Group Health Association out of business. They openly tried to stop physicians in the district from going to work for Group Health, and they tried to stop physicians, particularly specialists, from consulting with the physicians that worked for Group Health.

The First Court Decision Against the AMA, 1943

Hassard: The net result was that the Department of Justice brought a criminal antitrust action against the American Medical Association, the District of Columbia Society, and some of its individual members. That case went all the way to the United States Supreme Court.[1]

In January, 1943, the court unanimously held that the actions of the AMA and its local society were in direct violation of Section III of the Sherman [Antitrust] Act. (Section III governs the District of Columbia; Section I governs all the rest of the country.) And held that there was a conspiracy to restrain competition, and that indeed the government was correct in bringing its lawsuit.

The opinion is very interesting, because it also points out that if the AMA and its membership and its local society had limited its activities to reasonable persuasion, that would have not been a violation of the Sherman Act or any other antitrust law.

Chall: Reasonable persuasion, to try to get the Group Health doctors not to be in Group Health?

Hassard: That's right. Well, that's still the law.

After that decision, the AMA modified its approach towards closed-panel practice by trying to adopt a reasonable persuasion attitude and approach.

The Reaction to Kaiser Permanente

Chall: What was that?

Hassard: There was still the fundamental both fear and opposition to that type of practice of medicine, so-called closed panel. So when Kaiser Permanente left the shipyards after World War II, and acquired a hospital in Oakland and a staff of physicians at full-time pay, and entered the market for prepaid customers, the reaction of medicine, from the local level all the way to the AMA, was one of opposition. But also, in view of the Supreme

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[1] AMA v. U.S. (1943).

Court decision, the opposition had to be restrained. They couldn't actually boycott it or whatnot.

And so, the first years of Kaiser Permanente in the California care market, there was active hostility between both Alameda County Medical Association and the California Medical Association, with backing from the AMA. That hostility climaxed with an unethical conduct proceeding against Dr. Sidney Garfield, who was the medical director of Kaiser Permanente.

Henry Kaiser was furious over it, and my task as a lawyer for the Alameda County Medical Association was to help the physicians, both the ones that were acting as judges, and the physician who was prosecuting, to abide by the bylaws of the association and of the CMA and AMA, and abide by the rules of due process. In other words, procedurally make sure it wouldn't be upset for violating fundamental rules of due process, primarily.

There was a trial. It lasted quite a while, held in the evenings. Dr. Garfield defended his position, and Dr. Dorothy Allen, who was the secretary of the society and was the prosecutor, countered with a then-current AMA position.

It ended up with the judges, who were the members of the board of directors of the society, finding that Dr. Garfield was guilty of unethical conduct, but the penalty was to chastise him, to give him a reprimand. And it was done--without anybody saying so, it was I think perfectly obvious that the physicians hadn't changed their attitudes, but they had a decided fear of tangling with Henry Kaiser.

Over the years, hostility toned down. It took quite a few years, but in time, some of the Kaiser physicians applied for and were accepted as members of the Alameda County Medical Association, and other societies around northern California where they may have practiced.

For some years, while they were members, they were not active participants in society affairs. And then gradually, that changed. I would say within the last decade, Kaiser Permanente physicians individually have held offices in both local medical societies and the state association, and what was once outright hostility has completely ceased, as has the attitude of physicians in general towards--I have to call it closed-panel practice. The term HMO [health maintenance organization] was not even in existence in the forties, fifties, and sixties. It's a new-fangled term. [laughs]

Chall: Right, and it was coined in--yes. I guess it was about in the sixties.

Hassard: Probably there, sixties or seventies. But at first, it was hardly understood what people--. But I think the primary cause of the complete turnaround, in California at least, was when about ten years ago, the legislature suddenly, and without any public hearings, without giving anyone any opportunity to comment, suddenly adopted legislation that completely changed the law with respect to selective contracting by insurance companies and prepayment plans in general.

Chall: What does that mean, because I thought that the law had been really pretty well--I mean, HMOs were pretty well accepted by some time in the 1970s by an act of Congress.

Hassard: Yes, but an act of Congress didn't change medical thinking.

Chall: Didn't change medical thinking.

Hassard: No. [laughing] As a matter of fact, what Congress does has no bearing on how doctors think.

The State Legislature Introduces Competition in Medical Insurance

Chall: Oh, I see. You're talking about how doctors think. Well, what was done in the state legislature that changed thinking?

Hassard: Oh, dramatic. Up until that year, that point--

Chall: This was the 1980--

Hassard: Yes, or it must be 1982. Up until that point, the insurance code prohibited insurance companies from contracting with either hospitals or physicians, and requiring their policyholders to go to those selected physicians or hospitals. The law required them to give their policyholders freedom of choice, in just those words. The legislature, as I said, without any hearings or any anything, suddenly just eliminated that law.

That had dramatic effects. First of all, it gave the Kaiser Permanente closed-panel type of practice competition that it had never had before, and secondly, it forced physicians--first it forced hospitals, and later physicians--for survival to enter into contracts with third-party payers, other than the Blues

[Blue Cross and Blue Shield], which had been the only limitation before that.

As a byproduct of that, the differences between Kaiser physicians and non-Kaiser physicians sort of disappeared.

Chall: Let me see if I understand that. You said that the state legislature took out the term "freedom of choice?"

Hassard: Yes.

Chall: Just took it out, so that there was--

Hassard: First as to hospitals, and then as to physicians. Well, the first impact of it was--and the direct cause of the legislative action was the selection of hospitals for Medicaid, or as we call in California Medi-Cal, patients. Hospitals had to bid for what they would charge if they took Medi-Cal patients, and if they didn't get a contract with the state, then they couldn't have any Medi-Cal patients. And about half the hospitals contracted and half didn't. But that would have been illegal even for the state to do it before this legislation changed the law.

Bill Guy, who had just retired as president of Blue Cross of Southern California, was retained by Governor Jerry Brown, who was governor at the time, to be the czar of Medi-Cal. He headed up the process of contracting with selected hospitals, and bargaining them down on their rates. That's been the practice since then. If anything, it gets worse every year. Every time the legislature does anything, it's to reduce what the providers of health care get.

Chall: I guess this is an attempt to hold down the costs.

Hassard: Yes, but it doesn't do it. All it does is cause increase in costs, but they never understand that.

Chall: Well, during all these years of turmoil, nationally and locally, I came across some information that the AMA in 1954, the House of Delegates in New York introduced a resolution to change the code of medical ethics to make it unethical to practice medicine in a closed-panel, prepaid system. The resolution was withdrawn. I guess Dr. Garfield and Mr. Kaiser had long arguments with Dr. Fishbein about it at that time, and then they also realized that there was this Supreme Court decision.

Hassard: Yes, the Supreme--very definitely--

Chall: I thought at one time that it was the decision of the Washington State Supreme Court on a case that had been brought by the King County Medical Society, but that was probably another one.[1]

Hassard: That was entirely different. This was the Department of Justice against the AMA.

Chall: This [Washington State] decision also held that the boycotting--that they were boycotting Group Health at that time--

Hassard: Yes, Group Health in Seattle. Well, it would follow after the Supreme Court's decision.

Hassard: Every other court would have to hold the same thing.

Chall: Dr. [Ernest] Saward, whom we interviewed--he was the medical director in the Vancouver-Portland Kaiser--told us about an appearance he made before the AMA's Judicial Council in 1945 in Chicago.[2] There was an attempt to make practicing medicine for a salary unethical. He pointed out that one of the doctors on the council was a member of the Mayo Clinic, [laughter] who wanted to know whether the way he was practicing medicine was unethical, because he was accepting a salary. So that blew that position or argument.

Hassard: Yes.

The Effect of the Larsen Report, 1959

Chall: I suppose that at least some medical historians consider that when the Larsen report, when Dr. Leonard Larsen, I think under the auspices of the AMA, studied the whole practice of prepaid medicine--

Hassard: Yes. I was just going to comment on that. One of the early accusations against closed-panel practice was that the physicians who became employed by the groups practiced an inferior brand of medicine, that the quality of care was low. The rationale went this way: the policyholders or members, or subscribers, to the group paid fixed dues or charges, and that the less care that was given to them, the more the group practice would make. In theory, that is so. In practice, they get sued for malpractice. [laughter]

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[1] Group Health Cooperative of Puget Sound v. King County Medical Society (1951).

[2] Ernest Saward, History of the Kaiser Permanente Medical Care Program, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1986, p. 28.

But in any event, the AMA set up a study committee, chaired by Dr. Larsen. One of its staff members was Murray Klutch, who later worked for the CMA for years. After a thorough examination of group health plans, and the way the physicians in them practiced medicine, the committee--I forget whether it was a commission or a committee, but whatever it was--came to the conclusion that the practice of medicine within closed-panel group practices was basically no better and no worse than the practice of medicine outside of that type of setting.

That was really I guess the commencement of the long, gradual change in the relationship between closed-panel practice and organized medicine.

Chall: Mr. [Scott] Fleming, whom you know, decided that it basically ended the official sponsorship of reprisals against prepaid group practice.[1]

Hassard: I think he's generally correct in that statement. It isn't that simple, but it certainly had influence on physicians' attitudes.

Chall: That was 1959.

Hassard: I don't remember the exact year, but I knew it was around then. Because Murray Klutch came to California Medical Association about 1960.

Meeting Sidney Garfield and Henry Kaiser

Chall: Did you ever have the opportunity to meet Henry Kaiser and Sidney Garfield?

Hassard: [laughs] Yes! The circumstances were at the time of hostility.

Chall: Can you tell me about meeting them, and what it was like?

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[1] Scott Fleming, oral history interview transcript, Regional Oral History Office, University of California at Berkeley; in process.

Hassard: Well, of course, I met--starting with Sidney Garfield in connection with the unethical charges brought against him, and he basically wouldn't speak to me. He kept his eyes averted, and he wouldn't look at me and he wouldn't talk to me.

I first met Henry Kaiser at a dinner in San Francisco. As I recall, it was at the St. Francis Hotel, at which Henry Kaiser and--I think it was either Gene or Van Trefethen that attended with him, and Sidney Garfield. Medicine was represented by Dr. John Cline, who was then the president of the CMA, and several other physicians who were prominent in the California Medical Association.

The purpose of the dinner--this was during the pendency of the Garfield charges--was to see if there was any possible chance of a compromise or a settlement or accord. I remember that Henry Kaiser told us his reason for bringing the Kaiser Permanente-type of practice from the construction camps where it started into the general public was that he firmly believed that his mother died for lack of medical care, and he wanted to make sure that people would not have to die for lack of medical care. He avowed that his purpose was not to make money, that it was to help people. He couldn't see any reason why that wasn't acceptable to the medical profession.

Dr. Cline, who was an accomplished speaker and an accomplished debater, tried to debate with him and give him the reasons why practicing physicians didn't like that type of approach, even though they were in accord with his goal. But neither convinced the other. So the thing went on.

I have had other times at which I was in the same room with Henry Kaiser, but that dinner meeting was the one where I was able to get a real close-up view of what he was like. I have no doubt he was sincere. I have no doubt that he also had no comprehension of the economics of the practice of medicine. He brushed aside the competitive fears, and he was determined that he was going to proceed with his venture.

And I'll say this: up to now, a number of closed-panel prepayment plans called HMOs have converted to profit corporations, selling stock to the public, and their promoters have made millions and millions of dollars at the expense of the public, and at the expense of patients. But Kaiser Permanente has not done that, and I hope it never does. It has remained faithful to--

Chall: Yes, to the original--

Hassard: --to Henry Kaiser's original pro bono purpose.

Chall: Yes. Did you meet Mr. Trefethen from time to time?

Hassard: Yes. Not very often, but--there are two Trefethens. There's Gene Trefethen and Van Trefethen.

Chall: Well, this would be Gene, Eugene, he was--

Hassard: I've met both of them, at various times and places, under various circumstances, and I get them mixed up. [laughs]

Chall: It was Gene Trefethen who worked for Henry Kaiser all of his life.

Hassard: Well, so did his brother Van.

Chall: I see. I've never come across him. Have you anything else to say about the whole matter of this battle over freedom of choice, as it were? It's really as you say, the doctors wanted to be sure that they had an income, and this was competition; that's basically the problem.

Hassard: That's right. Well, you have another item here [on the outline], the corporate practice of medicine. When we get into that, I'll go back to HMOs and closed panels.

Chall: Yes, I thought it might fit in somewhere here.

Hassard: It does.

The Position of the California Dental Association

Chall: In the state legislature, I understand that in 1957, the California Dental Association sponsored a bill which, according to Mr. Fleming, at least overtly would have rendered prepaid practice unethical in California.[1] And at that time, there were also two other bills that came into the legislature that were probably hostile to prepaid practice. He says that the CMA was defeated on all three committees, and he and Gibson Kingren worked on that. I guess the question that I have is, how did the

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[1] Scott Fleming transcript.

California Dental Association get into this, if you can recall that?

Hassard: I'm sorry, but I do not recall any of the details. I do recall that there was legislation that California Medical Association supported, and that Kaiser Permanente opposed. I remember hearings at which the testimony got rather bitter and hostile on both sides. I remember that Kaiser Permanente was represented, and its spokesman at the hearings was Gardner Johnson--

Chall: CMA--?

Hassard: No, that's Kaiser Permanente.

Chall: Kaiser would have been represented by Gardner Johnson?

Hassard: Yes. Well, his brother Gordon Johnson--twin brother--was a partner in Thelen Marrin Johnson and Bridges, which were the lawyers for Kaiser. And Gardner was a former assemblyman, and he was very vitriolic in his attack on medicine.

At that time, there were two state dental associations, a northern one and a southern one. They were both represented in Sacramento by Anthony Kennedy, whose son is now on the United States Supreme Court. Tony, or Bud Kennedy, as he was called, grew up in Sacramento, worked in the governor's office when he was in college, and he was very, very astute as a lobbyist.

If Scott Fleming refers to the dental association as a proponent or sponsor of the bill, it must have been Anthony Kennedy who did it, but I don't quite remember why he would have done it. I know that dentists were even more rigid in their opposition to closed-panel practice, because they had to deal with a dentist called "Painless" Parker.

Chall: [laughs] I remember him.

Hassard: Well, Painless Parker hired dentists to work for him, and then advertised in the newspapers and radio, when radio came in, that his dental prices were low, much cheaper than anybody else, and he drew a lot of people. And he drew them away from the practicing dentists, and they hated him. So I can imagine that Kennedy may well have introduced a bill that was aimed at Painless Parker, but it caught Kaiser Permanente. But I'm just guessing now; I do not have a detailed memory of it.

Chall: But it's a good assumption.

Hassard: Incidentally, Gibson Kingren, who was a longtime Kaiser Permanente lobbyist, ended up working for Blue Shield of California, and he just retired last year.

Chall: I think he worked for quite a number of years on the Kaiser staff--

Hassard: Yes, both in Sacramento and in Washington.

Compromise is Better Than Confrontation

Chall: Apparently effectively. I don't know what the other bills were and Mr. Fleming didn't outline them. What he did say was that after this rather bitter period, when apparently the CMA he said was defeated on all three bills in committee, that you contacted him and you had lunch.

Hassard: It could well be.

Chall: You and he decided that in order to forestall any further confrontation of this kind, that you would discuss informally bills of this kind first, and work out a compromise, and then take your ideas to the committee. Do you recall that?

Hassard: In a general way, yes. I don't recall the details.

Chall: That would have been something that you would do, since you seemed to be more of a peacemaker than a confrontational person.

Hassard: [laughs] Well, I'm both.

Chall: I see. You can be confrontational when necessary?

Hassard: When necessary, yes. But most of the time in this life, confrontation is not productive, for either side. It's more productive to try and reach an accord. If you can't reach an accord, then you have to have controversy. Beating up on each other in public before legislative committees did not appear to me to be a good, long-term solution. And then I always found Scott Fleming to be a reasonable person. I can't say that for all of Kaiser Permanente people, but he was.

Chall: You had discussed your relationships with Ben Read how you worked getting bills into the proper committees with the proper titles so they would get to the right committee. What interested me is how this might have happened with your bills at that time.[1]

Hassard: No. If Scott's memory is correct, and the dental associations originated the bills, they came from Bud Kennedy or Tony Kennedy. Neither Ben nor I would have had anything to do with their preparation or introduction. If they were bills that were anti-Painless Parker, and pro the privately practicing dentist or physician, we would have joined in support.

Chall: Your relationship with Ben Read certainly did seem interesting in those years. Is there anything else that you would want to say at this time about relationships at the state level? For example, the bill that you told me about earlier, that deleted freedom of choice. You said that was done without any hearing?

Hassard: That's right, it was. It was done in a conference committee. They took a bill that had already passed both houses, with a difference so it had to go to conference, and rewrote it entirely, behind closed doors. That has become. This is rather aside from Kaiser Permanente, but--

Chall: That's all right, I want to get the general feel for the work of the legislature as you saw it.

Hassard: In the legislature, from roughly 1940 through sometime around 1970, were men and women who, with a very few exceptions, were honest, were diligent, were actually trying to do a good job for the public, and they tried to do things as fairly as possible.

That gradually changed in the seventies. Many people, including me, blame it on Jesse Unruh's insistence that the legislature be fulltime, and that they have the big staffs. That created a different breed of legislator. Things began to be done under the table and behind the scenes. Well, today we're having a budget crisis that, from my point of view, makes no sense whatever. The State of California cannot continue to spend more than it earns [laughs], you've got to do something--But you don't--at least I don't--observe on the part of the legislators any particular interest in the public. So that conference committee coming up with something brand new without any hearings, which probably would not have been possible twenty years earlier, was possible in the eighties.

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[1] Hassard, Fifty Years in Law and Medicine, pp. 99-101.

The Creation of the Political Action Committees

Chall: I see. I don't exactly know what the date is, but you had told Mimi that the lobbying activities also changed, that Ben Read was no longer sort of your chief lobbyist in a sense, even though he didn't belong to CMA. And that each--the CMA and all the other associations, and the specialties, all began to have their own lobbying groups and PACs, so to speak.

Hassard: That's correct.

Chall: Did that change come about in the seventies, too?

Hassard: Yes. Generally.

Chall: All part and parcel, you think, of the entire shift?

Hassard: Yes. Well, there were a number of factors that caused that. The PAC concept, for example, which emerged from Washington, D.C., because of the federal law, the so-called Hatch Act, that prohibits corporations from making any contributions, no matter how small or how large, to any federal campaign. That had slopped over onto state activities, because sometimes the two cannot be separated, and the concept of a political action committee was invented as a means of getting around the federal limitation on corporate contributions.

Some time in the seventies, the AMA followed the lead of other organizations and formed its own PAC, the American Medical Political Action Committee, and then set about going around to the various state societies and asking each state society to form its PAC. That caused a controversy here in California, because that was resisted by Ben Read and active members of the Public Health League, but they lost out.

And also at that time, Ben was really getting quite old. His name was Benjamin Harrison Read, and if you will remember when Benjamin Harrison was president of the United States, you'll know when Ben Read was born. [laughs]

Chall: His mother thought that would be a right name for a young son.

Hassard: Yes. For years, the chairman of the California Medical Association's legislative committee was a doctor in Napa, Dwight Harrison Murray. [laughs]

Chall: He's also going to come up in our discussion.

Hassard: All right. So they were both born around 1890, so by 1970, Ben was in his eighties, and he was slowing up.

Chall: And the legislature had changed.

Hassard: Yes. Oh, Unruh had done that. All of these things sort of came together, these causes.

Chall: Yes. It's interesting really to see the connections, because sometimes we just think of one thing happening, but there's always a connection--there's always a rationale for everything.

Hassard: Yes, that's right. Back in the forties through the seventies, the Public Health League of California, which was Ben Read--I mean, he ran it, and it was his front, so to speak--had as its members the California Medical Association, the two state dental associations, the dispensing opticians, the hospitals, and--oh, my gosh, we even had the pharmacists--

Chall: Nurses?

Hassard: And the nurses sometimes. But once or twice a year, there would be a full day, or two day even sometimes, meeting of the Public Health League, at which all these various health organizations would be represented. We'd sit around a table, great big table, and debate our approach on various things, and we almost always came out with a unanimous front. So that when Ben went to talk to a legislator, he was talking for--

Chall: What a group!

Ben Read and the Public Health League of California

Hassard: [laughs] A complete, a whole ball of wax. If I could talk about Ben just a little bit now--

Chall: Yes.

Hassard: He was an ex-newspaperman. He was raised in Idaho. He came to California in the early 1930s, so he was a good writer. He was scrupulously honest in his relationship with legislators, which paid big dividends. He was trusted. He was very hard-working; no matter how late he was up at night, he was at work at six the next morning--

Chall: Was he a bachelor?

Hassard: No, he had a wife, and grown children. He was always the first person at the bill room when it opened its doors--that's the room where you get the previous day's proceedings and bill stuff. He'd get them and he'd read them, so he would be up to date on everything that was going on in the legislature. He was very--secretive is a word that I was about to use, but it isn't quite that. He was very cautious about talking out of turn. So he never got into a personality problem because of comments about somebody else.

When I first was sent to Sacramento by my boss, Hartley Peart for the California Medical Association, my job was to be the spokesman at committee hearings. I did not do any lobbying. Ben did that. But Ben was so trusted that I was accepted even as a youngster, and after a while, the legislators all knew that whatever position Ben Read and I took, the entire health field was behind us. That made a tremendous difference.

Chall: Now you're fractured, in a way.

Hassard: Oh, totally fractured, with all kinds of lobbyists for all kinds of different health groups.

Chall: Not all agreeing.

Hassard: [laughs] Practically never.

The Federal Employees Health Benefit Program, 1959

Chall: I see. Well, that's an interesting phase in political history. Maybe we can move on into the federal arena, now. I don't know whether you were present or involved in any way in 1959--although you were then CEO of the California Medical Association--with the development of the Federal Employees Health Benefits Program, that was under the [President Dwight D.] Eisenhower--

Hassard: Yes, I was. But not so much on behalf of the California Medical Association as on behalf of the National Blue Shield Association, which I also represented at that time.

Chall: I see. Well, I guess the Eisenhower administration wanted a nationwide health benefits program for federal employees, is that what brought it all about?

Hassard: It was a series of compromises. And the legislation, as it ended up and as it was passed, contained a provision--that's still there--that in providing options to the federal employees for prepaid health care, there should be one government-wide service benefit plan, and one government-wide indemnity plan. That's for all federal employees. And the third option was other types of plans.

But the congressional committees, in using the language "one government-wide service benefit plan," thought they were describing Blue Cross and Blue Shield, which were the only organizations that could possibly meet that criteria, but they aren't government-wide. [laughing] Both Cross and Shield plans are all local plans, and not all of them are service. Some of them are indemnity.

Well, in any event, that legislation with that language was wholeheartedly supported by both Blue Cross and Blue Shield national organizations, and then when it was enacted, we had to put together one government-wide service plan, which was really a task. We had to deal with what was in those days almost 100 different Blue Cross and/or Blue Shield plans.

Chall: I understand that as the bill originally came out, Blue Cross and Blue Shield would have been the plans, but that that would have left out anything like Kaiser, or prepaid plans, and that Richard Neuberger, a senator, working maybe with Gibson Kingren and others, advocated that the prepaid system be an alternative choice, and that was placed in the bill.

Hassard: One of the difficulties is that the concept of having a federal employee health benefit structure--if you could call it that--was before the Congress not for just a few months but for several years, and there wasn't one bill, there were several. The bills, by amendment, took a dozen or twenty or thirty different forms at any given time.

Chall: Yes. And we're just talking about the end result.

Hassard: That's right. And people like Gib Kingren and Scott Fleming, who were primarily interested in Kaiser--well, not primarily, entirely interested in Kaiser Permanente--would remember one segment of the evolution of the legislation. Whereas, people like me, representing Blue Cross or Blue Shield or both, would remember other segments. But the end result was as I've just outlined.

Devising the Blue Shield/Blue Cross Contracts

Chall: Yes, that's right. So the end result was that you, with Blue Shield/Blue Cross, had to work something out with 100 or more local plans.

Hassard: Yes, we did, and that was a task, believe me! But we finally did it. Well, it happened, and the contract I mention now is still in existence today. We have something like--I guess it's three or four million people covered under it, federal employees and retired federal employees and their families. The Blue Cross and Blue Shield Association is the contractor with the government. Then it, in turn, subcontracts with individual Blue Cross and individual Blue Shield plans, and also, it contracts with the Blue Cross and Blue Shield plan in the District of Columbia to be the central processing plant, if you want to call it that. I have a letter I want to show you--it's in my waste basket. [looks for letter]

Well, here's the current letterhead. "Federal Employee Program, 1615 L Street, Northwest, Washington, D.C."

Chall: Did that come out of your wastepaper basket?

Hassard: Yes, because that came in this morning.

Chall: So this group at 1615 L Street does all the paperwork?

Hassard: Yes, it does. And it is managed--this evolved over the years. The Blue Cross and Blue Shield Association has what's called an FEP, Federal Employee Program, board of managers. Basically, it's a committee. And the FEP board of managers, which is made up of about nine of the CEOs of local Blue Cross and Blue Shield plans, acts as the board of directors of the FEP program, and the Washington office. So that basically, we now have a sub-sub-organization.

Chall: Must be a tremendous job to work out fees, because wouldn't fees be different, or insurance rates be different, depending on what part of the country you're talking about?

Hassard: No. In the FEP program, it's uniform across the country. But it's interesting enough, again under the law, the government-wide service benefit plan has to offer each federal employee that enrolls two options: a high option and a low option. The high option is much more expensive, but it covers the waterfront. It covers just about anything that can happen to you. The low option has deductibles and co-pays, and various limitations, and it is much cheaper.

Well, in the sixties and seventies, up until the eighties, we had more high option government employees than in the low option. Now, it's completely reversed. Most all of them are in the low option, and very few in the high option.

Chall: Because people--

Hassard: Price. It's just the price. The high option people we have are all retirees.

Chall: Because they're being paid by their agencies.

Hassard: No, they're retirees, retired government employees. They're not being paid anything.

Chall: But isn't the government paying for the health plans of the retirees?

Hassard: It's paying a portion. It only pays a portion for everybody, active employees or retirees. That's the formula that was worked out by Congress.

Chall: I see. What you're saying then is that retirees have more money to spend--

Hassard: No, they have more concern about getting sick. They have less money, but they're willing to pay more, because they are pretty certain they're going to be sick. And the younger people think they'll never get sick. That's true throughout the country in other areas.

Chall: How are the Blue Cross/Blue Shields staying in the black? Do they have to keep raising the rates?

Hassard: No. Well, the rates are a result of collective bargaining with the government's agency that is in charge of it. Yes, rates have been raised, but so have everybody else's. There were several years in which the Blue Cross/Blue Shield Federal Employee Program had red ink, but there are more years in which it's been in the black. And right now, it's quite solvent.

Chall: Well, they've apparently learned how to set rates better than the California Physician Service in the early days.

Hassard: No, [laughs]. Not only that, the switch from the high option to the low option helped profitability. The low option is more profitable.

Chall: I see. Not too many people need the services.

Hassard: Well, they may need it, but they don't take it, because they have to pay something for it.

Chall: Now, in the 1970s, President [Richard M.] Nixon developed a national health strategy. That also took many years to develop, but I think it started in those days or even earlier. This was the Health Maintenance Organization Act of 1970, that was to provide even a broader base, I guess, for the national health strategy. It was considered more efficient if you brought in HMOs--

Hassard: Yes. That was the theory.

Chall: Yes, that was the theory. Were you dealing around in that time with this particular issue?

Hassard: Not directly, and not in Washington.

Devising the Contract for Medicare Part B, 1966-1976

Chall: As I understand it, you were in Washington in the sixties, and maybe into the seventies, on a committee to meet with the administration on Medicare Part B.

Hassard: Yes.

Chall: Can you tell me about that? That was I guess both in the Johnson and the Nixon administrations, if you started in '66.

Hassard: Yes, it was Johnson. Well, the Medicare law as enacted in 1965 divided the benefit structure into two parts: Part A, which was institutional care, primarily hospitals and nursing homes, and Part B, which was basically physicians' services.

Part B was structured differently than Part A and still is. It was the intent of Congress, spelled out in great detail in committee reports, that in Part B, the government should not become the direct contractors with physicians, and should not set their fees for things that physicians were worried about. That there should be no direct relationship between the government and the practicing physicians throughout the country. That Part B should be administered by health care prepayment plans that contracted with the government's administration, which was the Social Security Administration. And that payment to physicians should be on the basis of the customary and reasonable level of fees in the communities, rather than any government fee schedule.

The act was enacted in 1965. It was to go into effect July 1, 1966, with the Social Security Administration as the administrator. The first thing that was done by the Social Security Administration, after President Johnson had signed the bill, was to select local contractors for the Part B part of Medicare. They divided the country up into roughly fifty areas. In California, there were two: southern California and northern. Some it's the whole state; New York's divided, but in any event, about fifty. They selected to be the contractors--and my recollection is in thirty-two of the areas--Blue Shield plans. And in the remaining areas, insurance companies.

Then, the legal department of the Social Security Administration undertook to negotiate with these roughly fifty different contractors a uniform contract. We started it in about January or February of 1966. Excuse my interrupting my train of thought. My recollections are fairly good on this subject because I have a six-inch-thick file right over there that I pulled out of storage and read through [laughing] the last couple of weeks. That's [pointing] my file from March to June, 1966.

Well, in any event, I ended up heading a de facto committee at first of several Blue Shield people--an in-house lawyer from the Chicago office, and a couple of lawyers from local plans--to meet with the government's lawyer, who was a gentleman named Mel Blumenthal, to work out a contract. The insurance companies had a similar sort of ad-hoc committee of lawyers that separately met with Mel Blumenthal--at first; we finally merged.

But the drafting of that contract took innumerable meetings, hours and hours of preparation and communication. From the side of the Blue Shield Association, one of our major difficulties was communicating with all thirty-two of the chosen contractors and their lawyers, and getting some uniformity of opinion and some authority to negotiate. We had a couple of meetings for that purpose, and luckily we were able to get authority, and I was the selected spokesman for the group.

The contract in draft form was changed time after time. There were two things that I--I won't say insisted upon, but proposed and argued, diligently for. One was that the contract should be on a no-profit, no-loss basis. The contractors should be reimbursed their cost. They should not profit at the expense of the beneficiaries of Part B, but they shouldn't lose, either. The second point I insisted on was that the relationship between the government and the contractors should be strictly on a carrier basis. In other words, that the contractors should not be servants of the government, but should be independently operating, functioning organizations, subject to a surveillance by the government to see to it that they were performing their contracts.

It took a long time, but we finally worked out the contract that was acceptable both to Mel Blumenthal and Art Hess, who was the assistant Social Security administrator, who was the head man, and to all thirty-two Blue Shield plans, and to all the insurance companies. So we had one, single form of contract. It didn't come easy. As I said, my file is six inches thick.

Chall: How often would you be going to Washington? You worked in Baltimore, I understand.

Hassard: Well, it was not Washington, it was Baltimore. The Social Security Administration's headquarters are in Baltimore. They have always been.

Chall: How often did you have to work in Baltimore with this committee? Would they all come to Baltimore?

Hassard: Yes. Probably two or three times a month, at least. Maybe more, during April, May, and June of 1966.

Chall: What did you do, get on a plane and go to work for several days and come back?

Hassard: Get on a plane at night. Work a day or so, and come back. I flew at night.

Chall: You did, and so that meant you started to work there as soon as you got off the plane?

Hassard: That's right.

Chall: That's a hardy constitution!

Hassard: [laughs] That's right. I can't do it now.

Chall: The contract would be a formal, general contract. But what would you do then about the differences? How would it be determined what was customary and reasonable in terms of fees? Wouldn't that vary?

Hassard: That does vary according to the area--

Chall: Then where would that be worked out?

Hassard: That has to be worked out by the contractor, with the government looking on, looking over his shoulder. That has gradually been modified by Congress. Over the years, Congress has basically reneged on its promise of not interfering with the physician-patient relationship, and it has put restrictions and ceilings on what is customary and what is reasonable, and then has chopped it down to the point where that whole concept has been killed.

Chall: The government is now concerned with the cost.

Hassard: Well, as always seems to happen, the cost of Medicare was grossly underestimated, just as is going on today with--you read articles about the cost if the government took the Canadian plan and put it into being, it would save billions. It would do the opposite: it would cost untold billions, because when it got into operation, it wouldn't function the way that dreamers think.

Well, Medicare was sold to the Congress on the basis that its financing would cost, say, X dollars. Well, it's cost ten times X. And as the costs go up, they try to put a cap on it, but then the victim always squirms out. In the practice of medicine, and the practice of law, for that matter, if your compensation is pushed down on you, you overcome it by doubling the amount of work you do. And who's to say whether writing a brief takes five hours or fifty hours? You could spend fifty hours on it or you could spend five. Well, if you're only going to be compensated at a low rate, you put in fifty hours. And physicians, if they're going to be undercompensated, then they will have a greater quantity. That's been true in workmen's compensation ever since the comp concept came into being. Government regulators and government policymakers never seem to understand it.

Chall: You're suggesting maybe that if--in the case of doctors, if they take on more patients, then they might not be giving the same quality care?

Hassard: Well, they may be giving the same quality care but--

Chall: They're working harder?

Hassard: No, they just have the patient come back oftener.

Chall: I see. Naive of me.

Hassard: Well, you're not--congressmen don't catch it either, so you don't have to say it's naive.

Chall: I see. So when you finally worked out your contracts, then that ended your committee work?

Hassard: No, it didn't, because the contracts were for a term of one year. We tried to get them for a longer term, but the government wouldn't bite. So the contracts are still on a yearly basis.

Chall: They are a yearly basis?

Hassard: Yes, they're renewed every year. And for the first five or ten years, the renewal process involved the government people proposing changes, and the representatives of the contractors, or carriers, as they were called, either agreeing to those proposed changes or opposing them, and if they opposed them, and they always did most of them, then we'd have to have a conference and argue it out. And that meant trips to Baltimore at least once a year, from '66 until I stopped doing it, which was maybe ten years later.

Chall: Is that so? So every year it was the same--

Hassard: Yes. There were gradual changes. Some of them were warranted, and some were just bureaucratic bureaucratese.

Chall: And over the period of time when you started with, say, Mel Blumenthal, would the administrators change and come in with different ideas than let's say those you started with?

Hassard: No, for the first ten or twelve years, the person in charge of Medicare, both Part A and Part B, was Tom Tierney, and he remained that way until he retired, and the lawyer was Mel Blumenthal. There was a continuity there.

Private Enterprise/Government Function

Chall: Continuity, even though the administrations changed.

Hassard: That's correct. That was very helpful. But Mel Blumenthal retired, and he got very ill and passed away, and Tom Tierney retired, and since that time, there has been a rapid turnover, every year or two or three, which has made a great difference--it makes it very much harder. The relationship, while the same on paper, the same contract with various modifications, is in effect today as it was in 1966. The paper relationship is far different than the personal relationship which has changed a lot.

There are people in the government that didn't accept then and never will accept and don't accept now, the concept of having any private enterprise operate a function that they think is a government function, even though the private enterprise can do it ten times better.

We had the same problem here in California with Medi-Cal. The Pat Brown administration contracted with Blue Cross and Blue Shield to administer Medi-Cal, and we had to have a lawsuit. The California State Employees Association was furious. They thought the administration of Medi-Cal should be in the hands of state employees, and they said it was unlawful to contract out. Well, we won the lawsuit and beat the state employees. But there are those in government that just can't accept the concept of anybody other than themselves being willing and able to do the work.

So there are some in the administration that are in accord with the concept of having private enterprise administer Medicare, and there are others in the administration that want to get rid of it.

Chall: So is that a tug-of-war?

Hassard: That's a tug-of-war, always. It doesn't make for a harmonious operation, which I think we had for the first few years.

The Secretary's Commission on Medical Malpractice, 1971-1973

Chall: Let me see. What about the President's Committee on Medical Malpractice?

Hassard: Well, it was called the Secretary's Commission on Medical Malpractice. It started under Nixon. Several physicians in southern California that he knew quite well complained to him about the then medical malpractice problem, increases in cost, and so he decided that we should have a federal commission to study the subject. He directed the secretary of Health, Education, and Welfare to form such a commission.

Chall: Was that Finch at the time?

Hassard: No, it was after--Elliott Richardson by then. This was in 1971. Finch had left I think just before.

The Secretary's Commission was formed in the summer of 1971, and functioned until January of 1973. I learned a lot about government operations from it.

Commissions: A Critique

Chall: What did you learn?

Hassard: Well, first of all, I discovered that federal commissions, politically, have to be made up of representatives from every segment of society. It differs from the Ark in that instead of being two of everything, it has to be one of everything. [laughter]

Chall: That keeps it down a bit.

Hassard: The net result is--I made a study of this matter--there's a book written on it.

Chall: You wrote a book?

Hassard: No, no. Somebody else wrote the book, but I read it. And it's been true since the days of George Washington. It's politically unacceptable to have a commission that isn't diversified. So it almost guarantees that it's not going to work, you're not going to accomplish anything. Not quite; it's possible, but it's very unlikely.

The second is, that the staffing of a federal commission is always a political plum. It has very little to do with the staffs' ability [laughing]. Sometimes you get good people, and sometimes you don't.

The Report and Still No Solution

Hassard: The commission made a report to Elliott Richardson in early 1973, and then went out of business. It had a lot of research projects. The appendix was about a thousand pages long. I've got one of them right over in the corner of the room. And the report itself, I got it out--[pulls out report]--is this document. It has nothing radical in it.

Chall: But did it pave the way for handling the malpractice problem?

Hassard: No, the malpractice problem got worse.

Chall: [laughs] But that had nothing to do with the fact that the commission had met?

Hassard: That's right. There were some good ideas in the report, but nothing that was going to drastically change the world. I was unhappy, as were some of the other members of the commission, when Elliott Richardson in effect terminated us, because he did it very, very shortly after we received the major research projects that had been underway, so we had no time to discuss them, no time to analyze them, no time to decide what recommendations would come from that. But politically, I don't know whether it was Richardson himself or whether it came from the White House. They just wanted to get rid of us.

Chall: It wasn't--I know that I think Richardson didn't stay in that position very long--

Hassard: No, no.

Chall: --CIA, or something--

Hassard: No, it wasn't that. I know he went to something else.

Chall: How big was the commission?

Hassard: I think there were nineteen members.

Chall: And they represented--

Hassard: [looking at list] No, there were twenty-one members.

Chall: Were they so diverse that you couldn't come to any conclusions, or you just didn't have time to do it?

Hassard: Well, we came to some conclusions, very seldom unanimously. Most always by majority vote, with dissenters. The twenty-one members were quite diverse.

Chall: With opinions that would vary all over the place?

Hassard: All over the place, yes.

Chall: The study committees, the studies that you didn't have a chance to look at, are they a part of the commission report?

Hassard: No, they're separate volumes. This is just the report itself. The separate volumes are about that thick. They were outside research studies that were commissioned--

Chall: That you contracted for.

Hassard: Yes, and the government paid for.

Chall: In the way of commissions, is that typical, do you think, not only of the fact that everybody has to be represented, and the staff is a political plum, but that they get--the final reports may just be put on the shelf?

Hassard: That's generally the result, yes. [laughs]

Chall: Good for scholars to do historic studies--

Hassard: That's correct.

Chall: --of how things might have evolved or did evolve over a period of time.

Hassard: Yes, that's correct.

Chall: Was that a frustrating experience for you?

Hassard: Well, it was both a learning experience for me, and at the end, a frustrating experience. I hoped that we would accomplish more than we did.

Chall: The whole matter of malpractice, then, really was taken up by your own medical people in your own areas. You discussed the development of the malpractice insurance in California, in the earlier interview. You had to solve that yourselves here.

Hassard: Yes. Well, our problem in California came to a head in 1975, when the insurance carriers insuring physicians against malpractice, one in northern California and one in southern California, both of which had most of the doctors of the state, either pulled out or raised their rates astronomically. The carrier in northern California just said, "We've had it, and we're through." The carrier in southern California increased its rates 300 percent.

That produced a crisis amongst physicians, and as a result of that crisis, Jerry Brown called a special session of the legislature. Legislation was enacted that provided not an overall cure, but some individual cures for the malpractice problem. The legislation was called MICRA, Medical Injury Compensation Relief Act.

It has on the whole been very successful. It took ten years for it to go through the courts, and its constitutionality upheld, which finally happened. But it has stabilized the market in California. Most states have not had that favorable experience. Where states do not have it, the market's been very unstable.

But the malpractice problems--the nature of the problems don't change, and the opinions of various interests don't change. It's a stalemate. From the point of view of the defendants--those are the sued physicians, dentists, hospitals, nursing homes, sometimes nurses--the rules are stacked against them. The opinion of primarily the lawyers that do the suing, there is too much malpractice, and they should have more cases and--[laughs] they should get more damage awards. The two just clash.

A Possible National Solution

Chall: But in terms of this national commission, what would the administration have been able to accomplish in this field? What was their purpose? What could they have done?

Hassard: If the commission had produced a report that called for changes in the law of medical malpractice, and if the administration agreed with the commission, it would have proposed legislation in Congress. Now, that's what happened. Some of our recommendations have been accepted by the [George] Bush administration, and have been proposed to Congress. In Congress, they meet the same controversy that I just described. Whatever appears to be a good proposal by those that are sued for malpractice is bitterly opposed by primarily the plaintiffs' lawyers and usually consumer groups. And whatever is agreeable to the plaintiffs' lawyers is bitterly opposed by the health care people--and so nothing happens.

That's not limited to medical malpractice. Take in the field of health care generally. There was a commission report chaired by Rockefeller of West Virginia a couple of years ago with a lot of recommendations, and they've gone to Congress, and then they're stalemated in Congress. That's about the usual fate of the federal commissions.

Chall: I just wondered if the federal had to have something that concerns interstate commerce.

Hassard: Well, the way interstate commerce has been interpreted by the United States Supreme Court these days, this is interstate commerce, your interviewing me.

Chall: I see. [laughter] It's a wide brush.

Hassard: It's a wide brush, it sure is.

Chall: Okay, is there anything else you want to say on that subject?

Hassard: Not that I think of at the moment.

The Corporate Practice of Medicine: Profits v. Patients

The Earlier Concept of the Doctor-Patient Relationship

Chall: All right. Then let's finish today by talking about the corporate practice of medicine.

Hassard: Well, the concept that goes back centuries was that a professional who deals on a relationship of trust and confidence with clients or patients should not have forces that interfere or could interfere with his or her carrying out of that trust and confidence explicitly. The catch-phrase, "corporate practice of medicine," really means that the practicing physician, and the same is true of the practicing lawyer, should be able to serve--in the case of physicians, serve their patients with undivided loyalty. And to have undivided loyalty, they have to be free and clear of control or domination by any third party.

When I first started to practice law in the 1930s, that concept was widely accepted. It was traditional and time-honored, and it was considered in the public interest. The Medical Practice Act, when it was codified in a business and professions code in the mid-1930s, contains a specific section in the law that says, "Corporations and other artificial legal entities, no matter what their legal structure, have no professional rights or privileges." And that only a licensed individual can be in that relationship.

That concept was not only widely accepted, it was the law in almost every state of the union--there were two exceptions. And definitely the law in California.

The idea of group practice, which we discussed earlier with Kaiser Permanente, was primarily, or at least largely, opposed at the first half of this century because it was thought, rightly or wrongly, that no matter what the motive of the outside parties--in the case of Henry Kaiser that I told you, his motive was--

Chall: Affordable health care.

Hassard: Affordable health care for the public. No matter what the motive, there would be interference with the physician-patient relationship, and the physician would not be able to serve his or her patient with undivided loyalty.

The Current Business Concept and Possible Solutions

Hassard: That concept was the law, and not only the law, but as I said, an acceptable law, until the beginning of the eighties, and then it began to get whittled away. The legislation that I mentioned to you about selective contracting was a meat axe to the concept. And now you have insurance companies, stockholder-driven HMOs, all over the lot. The practice of medicine is called an "industry." That would have been unthinkable fifty years ago. It has practitioners that are on the New York Stock Exchange. And instead of a profession, it has become a business.

As a business, it's an entirely different concept. In many instances, the patient is the least important part of the project; making money is much more important. I know I'm old-fashioned in this, but I think that the public was better served when the rules limited physicians to being independent and having their loyalty solely to the patient, rather than to the board of directors.

Chall: Does this have anything to do with the hiring of physicians by hospitals, too?

Hassard: Yes, in the long run, the same thing. It's not the same, of course--I think the worst examples of what I think are absolutely unconscionable actions are the nonprofit HMOs that, for the enrichment of their management, converted to stock companies and then sold their stock to the public, and became instant millionaires. At whose expense? At the expense of the public, expense of the patients.

Chall: What can be done about that kind of HMO, as opposed to let's say the Kaiser Permanente kind?

Hassard: I think it should be outlawed.

Chall: There would be a way to outlaw that type of corporation?

Hassard: I don't think the clock can be turned back on the Kaiser Permanente-type of HMO, the public-interest, let me say, HMO. But I think the clock can be turned back on the money-grubbers, and I think it should be.

Chall: How does the--is the CMA interested in this, or are they also caught up because some of these corporation members belong to the CMA?

Hassard: [laughing] You've answered your own question. The answer is, the CMA is caught, as some of its members are part and parcel of the projects that I think are more Wall Street oriented than patient-care oriented.

Chall: So is there anything coming before the legislature or the Congress at all on this matter, or is just a festering problem?

Hassard: As of now, it's just a festering problem. I don't know of any proposed legislation that we should focus on. But I think in the course of time, problems will become so obvious that there will be legislation. When, I don't know, or it may go in the other direction. You might see [laughs]--make the whole medical field a trade and let the consumer beware.

Chall: I see what you mean. Well, is there anything else you want to say about that? Because it's an important subject. Or shall we end our interview for today?

Hassard: I think so.

V CONTINUING DISCUSSION OF EARLY LANDMARK CASES

[Interview 5: July 28, 1992] ##

Malpractice Insurance and the Concept of *Res Ipsa Loquitur*

Chall: I wanted to continue with some of the cases that your firm dealt with in the early years. The books in your library went to Volume 76.

Hassard: They stop in the mid-1950s, as I recall. I don't know why we stopped printing, publishing them. The various briefs and transcripts are unbound and still around various places. Right behind you is a cabinet full of them.

Chall: I see. Well, it would be extremely helpful to have them.

Hassard: They're not indexed now.

Chall: I started with 67, and finished with 76 and looked particularly for those cases that I thought would be useful to our interview. A couple of them dealt with a concept which I don't know that we've covered as such, although we have in general, and that is *res ipsa loquitur*.

Hassard: *Res ipsa loquitur*, yes, the thing speaks for itself.

Chall: Now, you had one case in 1936--Charley H. Engelking--

Hassard: Engelking v. Carlson--

Chall: The doctors, [F. J.] Carlson and [Douglas] Ream apparently, had severed a peroneal nerve while they were doing surgery to repair an injured knee, an injured ligament on the left knee and it caused foot drop. You came in as an *amicus curiae*. This was one time you used that concept [Volume 67]. There was another in 1950. There might have been some in between.

Hassard: Yes, there were.

Chall: The 1950 case was Henry Cavero v. Franklin Hospital [Volume 76]. And you also came in as *amicus* on that one.

Hassard: Yes. An unexpected result of surgery.

Chall: Was the second one with Henry Cavero related to the death of a child, the plaintiff's child under anesthesia?

Hassard: Yes.

Chall: Now, do you want to explain that issue?

Hassard: To understand the judicial decisions on the subject, I have to go back a bit. Prior to, say, the mid-1930s, a plaintiff patient suing a physician defendant had to produce an expert witness to testify as to the negligent conduct of the defendant physician. The original rule, which has long ago been abandoned, was that the expert witness not only had to be a physician, but had to be a practicing physician in the same locality as the defendant physician.

In most communities in the United States, and I guess elsewhere in the world, a physician would be hesitant to testify against a colleague in his own community. I think that the same would be said of other life endeavors, if the rule would apply to others. Because of that difficulty, it was very, very difficult for a lawyer for the suing patient to get by a non-suit, to get a case to the jury. Because most of the time, they couldn't find a physician in the locality willing to testify.

Along in the thirties, several plaintiff's lawyers in California decided to try a new approach. If there was an unexpected result, particularly in surgery, to claim that that was a matter of common knowledge, that such an unexpected result didn't occur in the absence of negligence. The doctrine they were talking about is called *res ipsa loquitur*, the thing speaks for itself, and its origin was in England.

The first case, or one of the first cases, in which the court held that the thing speaks for itself was an accident case where a Londoner was peacefully walking down the sidewalk, and a brick fell on his head. He sued the owner of the building whence the brick came. He couldn't prove how the brick fell, but the court held that the thing spoke for itself, that bricks didn't fall off a building unless somebody was negligent either in installing the brick in the first place, or someone threw it or something. And it was that doctrine that was first approached--and the courts bought it, much to my chagrin, of course. [laughs]

But it was understandable why they bought it, and they applied *res ipsa loquitur* as a substitute for a real live person testifying as to the cause. And at first, it was strictly limited to something like a brick falling, something unexpected. But as the years went by, the judges in California began to expand it and expand it.

The Use of the Expert Witness in Court

Hassard: It was quite a problem, then. As time went on, things changed. Later--I guess it was in the sixties--the courts in California abandoned the so-called locality rule, and substituted a rule of occupational experience. They said any physician anywhere could testify if that physician had occupational experience in the type of medical activity that was involved in the case. In other words, if it was a severed nerve in surgery, any surgeon could be qualified to testify, no matter where he practiced.

Of course, then, in the modern days of telephones, airplanes, and automobiles, people get around. They're no longer confined to their communities, and when that occurred, the difficulty that plaintiffs' lawyers had in getting a witness didn't entirely disappear, but it almost disappeared, and it did disappear in a few years. So there's no need for *res ipsa loquitur* any more, basically.

Chall: Has that meant that there are doctors who are expert witnesses all over the United States, special doctors?

Hassard: Definitely yes. They're for hire. In fact, there are agencies that are in the business of supplying such witnesses.

Chall: Are those difficult cases to try, then, for attorneys on the defense?

Hassard: Oh, it varies. I'd say that--I can't say the majority of cases, but in many cases, the effectiveness of the hired gun is severely damaged by proving that he is a hired gun, and then you say to the jury, "Of course he's going to testify that. He's paid to do so."

Doctors and Practice in County Hospitals

Chall: Well, there were a couple of other cases I picked up, which do not deal with the *res* situation, and I don't know whether you want to talk about them. They're kind of interesting. [looking through papers] This was 1939, and it concerns Joe Smith, M.D., versus the Kern County Medical Association [Volume 71].

Hassard: Yes, yes.

Chall: You certainly remember that one!

Hassard: I do, very well. [laughs]

Chall: Do you want to talk about that?

Hassard: Well, county hospitals.

Chall: Yes, Smith was expelled from the medical society, and then therefore expelled from working in the county hospital, and he sued.

Hassard: That's right.

Chall: Okay. Not an unusual case?

Hassard: Well, it would be unusual for today, because things have changed again, but back in the twenties, and before, and up into the Depression in the thirties, by law in California, counties had to maintain a hospital, called an alms house. The hospital had to be available to the indigent poor and the dependent sick--that's the statutory definition written back in the 1850s or '60s somewhere--at county expense. Most counties hired on a salary basis one or more physicians to operate the medical aspects of the county hospital, and the remaining physicians who practiced therein were local physicians in general practice, and they donated their time and services to the county hospital.

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Hassard: In the early days a gentleman named Ellsworth, an executive in the State Farm Bureau, conceived the idea of having the county hospital not limited to the care of the indigent, but open to all citizens of the county, particularly farmers. [laughs] And that concept was promoted by Ellsworth primarily in the rural areas of California, primarily up and down the big valley.

Kern County Board of Supervisors was one of the early county board of supervisors that "opened" the county hospital to the general public of Kern County. Obviously, the physicians donating their services for free didn't like that idea, and as a result, the charges were filed against Dr. Smith, the full-time physician medical director of the county hospital, that he was practicing medicine illegally, providing services to the non-indigent in the county hospital. He was expelled, and then he ultimately sued.

There were bitter fights in the legislature during those years over the proper role of the county hospitals. The controversies kind of disappeared with the advent of World War II, and economic conditions changed. And then with the advent of Medicare and Medicaid, the entire county hospital system just about collapsed, and the issue disappeared completely. So Smith v. Kern County Medical is just sort of a remembrance of history now, and has no--but it was very controversial then and back in the thirties.

Chall: And did it occur in other counties as well as Kern?

Hassard: Not to the extent that it happened in Kern. In the lower San Joaquin Valley, my recollection is Tulare County and one or two others at least partially opened the doors of their county hospitals, but I think Kern went further than any of the others.

It was very, very hot and heavy back in the thirties, but since it disappeared in the sixties, it's just like the Short-Doyle; I hadn't thought of it. At least in forty years.

Then, the Largest Verdict in the History of the State

Chall: I don't know what the end result of this case was, but it lasted a couple of years [1947-1948]. It was Jeanette Glickstein v. Phillip Lipsett, M.D. [Volume 76].

Hassard: Yes, I remember the names.

Chall: She was an English woman who came to California and had a lot of plastic surgery done on her face, her breasts, and her abdomen. She felt it was botched, I guess. So the jury awarded her $115,000 for this so-called botched plastic surgery. It was a huge verdict.

Hassard: It was the biggest in the history of the state at the time.

Chall: It was huge, according to the briefs, "when weighed by the evidence and the lack of evidence, misconduct of record," so I think you and some other attorneys appealed that one claiming it was the result of passion and prejudice.

Hassard: Robert Lamb was the other attorney, because he represented Lloyds of London for years here, and my recollection is that the doctor involved was insured through Lloyds. I don't recall the final result there really!

Chall: I don't recall seeing it in the journal, although it may have been there.

Nonprofits and the Corporate Practice of Medicine: Opening the Way to Closed Panel Medicine

The Complete Service Bureau v. San Diego: A Landmark Case, 1954

Chall: You did ask me to check on the Complete Service Bureau v. San Diego, and your librarian, Miss Shea, did so and she produced a copy of the record in its entirety--[Volume 73]

Hassard: Oh, boy!

Chall: She didn't want me talking about it without--

Hassard: Knowing what you were talking about!

Chall: That, and she felt that you might want to talk about it, and you had to have the record exact. She's very careful. So there it is, if you want to take a look at it. That was 1954. I think there were cross-complainants--

Hassard: Yes, there were.

Chall: This is the supreme court record.

Hassard: Yes. This is the decision of the California Supreme Court.

Chall: You claimed that that ended any further cases against closed panel medicine, as it were?

Hassard: No, not exactly that. First I should describe the Complete Service Bureau. The Complete Service Bureau was a California nonprofit corporation, with a voting membership. The voting membership was very small, and in actuality, the corporation was controlled by one individual, who was its president and general manager, and sole beneficiary of any monetary gains.

Chall: That was Mr. [William David] Parmer.

Hassard: The San Diego County Medical Society was of the opinion that he was engaged in a corporate practice of medicine. Now, this is in the late 1940s, when the case first started. Now, at that particular time, it had been clearly established in California, both by statute and courts' decisions, that the practice of medicine by a corporation was unlawful. But all of the cases involved ordinary profit-seeking corporations. A nonprofit corporation had not been the subject of such litigation, with one exception: in 1946, the California Supreme Court had upheld the prepaid health coverage of California Physicians Service, now known as Blue Shield of California, which is a nonprofit membership corporation. However, its membership consisted of one category of almost all the physicians in California, and another category of all of the subscribers to California Physicians Service. So it was not parallel or analogous to Complete Service Bureau.

However, there was one other organization in California that had just started in dealing with the general public called Kaiser Permanente, which was also a nonprofit corporation, with a little broader membership than Complete Service Bureau, and without any individual having any particular monetary benefit from it. But legally, Complete Service Bureau and Kaiser Permanente fit into the same mold.

In any event, litigation was commenced in San Diego by Complete Service Bureau against the San Diego County Medical Society to stop it from doing anything, including denying membership to the physician employees of Complete Service Bureau, or anything to hinder its activities. The San Diego Medical Society cross-complained, claiming that Complete Service Bureau was illegally engaged in the corporate practice of medicine. So the case proceeded on those two opposing points of view.

At the trial level--it was tried in a very rather lengthy trial, a hotly disputed trial, and a trial before a judge without a jury--the judge ultimately decided in favor of Complete Service Bureau on its complaint and in favor of Complete Service Bureau on the cross-complaint. The San Diego County Medical Society then appealed.

The Significance of Kaiser Permanente

Hassard: Once it got into the appellate level, Kaiser Permanente threw in its general counsel, Thelen Marrin Johnson and Bridges of San Francisco, which intervened as amicus curiae on behalf of Complete Service Bureau. And hence, the case took on tremendous importance, not so much because of Complete Service Bureau's activities, which were limited to San Diego and the San Diego area, but because of the tangential impact on Kaiser Permanente.

In the court of appeal, the San Diego County Medical Society won. The court of appeal held that indeed it (Complete Service Bureau) was engaged in the corporate practice of medicine, and that that was illegal. The Complete Service Bureau then petitioned for a hearing in the California Supreme Court. The petition was granted, and it was vigorously argued both in briefs and in oral argument by both sides, including the amicus curiae. And ultimately, the California Supreme Court--I think it was a five to two decision--by a five to two decision decided that Complete Service Bureau was lawfully engaged in what it was doing, because it was nonprofit and therefore didn't violate the corporate practice rule, and that it could continue.

Everyone understood that the real beneficiary was Kaiser Permanente, and an attack on Kaiser Permanente's activities as being unlawful would not fly after the supreme court's decision, and the supreme court knew it very well also.

Chall: They knew the impact of their--.

Hassard: I remember, that case really taught me a lesson in supreme court argument. In the oral argument, I made the argument on behalf of the San Diego County Medical Society, and a lawyer named Harry Sloan argued on behalf of Complete Service Bureau. The court asked me a number of friendly questions, listened attentively, and when I finished, Harry Sloan started in, and they didn't let him talk more than a minute or two when they started bombarding him with critical questions. They lambasted him for a half-hour or so.

When the oral argument was all over, as we walked out, Harry turned and said, "Congratulations, Hap. You've won this hands down." Well, it turned out he'd won. [laughs] All it proves is that what goes on in oral argument doesn't tell you anything.

Chall: Did it indicate that they wanted to get the facts from him, or that they just went off and thought about it later?

Hassard: No, see, the basis of our argument was that while this was a nonprofit corporation in name, and it was purported to be in the public interest and a public service type of activity, as were Kaiser and Blue Shield, the fact was it was for the personal benefit and personal monetary gain of one man, Mr. Parmer. And our evidence would pretty well prove that. The court of appeal accepted that as fact, and held accordingly. The supreme court ignored it. But they questioned Harry Sloan vigorously on how much Mr. Parmer made and what he did. [laughing]

Chall: Well, I noticed in reading it that they had checked with other hospital administrators to find out how much capital went into upkeep and administration and facilities and all of this kind of thing.

Hassard: That's right. It's a landmark decision in that it set the stage for the subsequent development and growth of Kaiser Permanente, and other similar organizations, primarily though Kaiser Permanente.

Chall: Yes. There were a number of arguments having to do with advertising, which I find kind of interesting.

Hassard: Yes. That's historic now, it's all historic now.

Professions: Incorporation and Advertising

Chall: Now doctors incorporate and they advertise. You see it on the bus; there are advertisements in the papers. So that's changed, too.

Hassard: Dramatically.

Chall: Did that change by reason of law?

Hassard: Yes. First of all, professional corporations, as a matter of law. The Internal Revenue Service refused, just absolutely refused, to recognize retirement plans for lawyers, physicians, and other professionals. So that in my instance, as a practicing lawyer, self-employed, I could not have a retirement plan. But if I were an employee, I could.

So a lawyer in Los Angeles named Jones conceived the idea of establishing by statute a new kind of corporation: a professional corporation, the shareholders of which had to be members of the profession involved, primarily either physicians in the case of medicine, or lawyers in the case of law. The board of directors had to be members of the profession, and all of its assets had to be limited so that no one who was not a member of the profession could ever get it. And that became law.

And then, physicians and lawyers both started to incorporate as professional corporations so that they could get the retirement plans that anybody other--why the IRS did that has always baffled me. There was no rational reason for its position, and it ended up losing the tax battle. But the concept of corporate activity then became, instead of completely forbidden, became open to physicians and lawyers.

From that it was only a step beyond that to say, well, the First Amendment permits freedom of speech, and therefore physicians and lawyers have to be able to speak freely, and speaking freely means they have to be free to advertise, which is part of free speech. And that's the way it developed.

Chall: Just a slow accretion. I thought that doctors incorporated also in order to shield themselves from malpractice--

Hassard: That doesn't work. It doesn't shield them.

Chall: Was that a reason?

Hassard: No. Really, physicians weren't the prime movers on the professional corporation; it was mostly the lawyers. But the motivation was the same in both professions, that to be able to have some means of setting aside funds for one's retirement.

The Palo Alto Clinic; the Ross-Loos Clinic

Chall: During this period of time, the 1950s and before, there was the Ross-Loos Clinic in Los Angeles. Dr. Russell Lee had a clinic in Palo Alto. Were these ever looked at by the CMA?

Hassard: Well, in the first place, they were quite different, entirely different. The Palo Alto Clinic, founded by Dr. Russell Lee, was a group practice of physicians who simply went into partnership together, and who practiced medicine just the same as a solo practitioner, except that the office was open and there were various specialties to all its patients.

The Ross-Loos operation in Los Angeles was not a clinic. Dr. Ross and Dr. Loos back in the 1920s as co-partners entered into a contract with the City of Los Angeles to care for all of its employees on a prepaid basis. The city paid so much, and for that so much, the employees of the city were allowed to go to Drs. Ross and Loos. They established what they called a clinic; it was just basically their offices for the practice of medicine. To that extent, it was similar to the Palo Alto clinic, but their major purpose in functioning was to secure as patients the employees of the City of Los Angeles, on a prepaid, flat, so much per month basis.

It was, I guess, the first substantial what we called then closed-panel health insurance operation. It was widely written up and praised by ultraliberals. I remember reading articles in 1930 that said by 1935, all of medicine throughout the United States would be practiced like Ross-Loos. [chuckles] Well, it grew to a certain point, and then it stagnated. It was bought by an insurance company a few years ago, I think Cigna. So it's out of business now.

It was highly controversial, though, at first, and the Los Angeles County Medical Association threw the two doctors out of the organization.

Chall: Oh, they did?

Hassard: They did. They appealed, and they went on appeal to the AMA, and the judicial counsel of the AMA reversed the Los Angeles County Medical Association.

Chall: Wow!

Hassard: Well, because the county society started off by saying to Drs. Ross and Loos, "You prove that you're doing all things right or we'll throw you out." They put the burden of proof on the accused doctors, and the AMA rightly said, "That isn't the way you do it." [laughs] The burden of proof is on the accuser, not the accused.

Chall: Un-American.

Hassard: That was all a terribly political turmoil in Los Angeles when they got reversed. But as a result of that reversal, an uneasy peace was made between Ross-Loos and county medical, and in fact, in later years, Dr. Loos became a member of the Council of the California Medical Association, representing Los Angeles County Medical. And Dr. Ross became a chairman of the malpractice committee of the association. Things change.

Chall: Yes, they do. Well, you surely have seen changes.

Hassard: Yes.

VI UPDATE ON MEDICAL CARE ISSUES: LOOKING INTO THE 1990s AND BEYOND

[Interview 6: September 10, 1992] ##

Blue Shield Considers the Future of Medical Care

Chall: Did I understand correctly that during this past month, you were going to a Blue Cross/Blue Shield--did you call it a retreat, or was it a meeting?

Hassard: Oh, that was Blue Shield of California's board of directors, and once a year that board meets for three days at some retreat-type area. This year it was at Quail Lodge in Carmel Valley. It's been at Silverado, it's been at Ojai, and so forth. The three days is spent just in a general review of business conditions, and we always have a speaker each day. This year we had Alain Enthoven for one day, and a chap named Ian Morrison who I had not met before, but he was excellent. He's a Canadian, graduated from Edinburgh. Oh, and also Newcastle-on-Tyne, which surprised me; first person I've ever met that went to Newcastle-on-Tyne. [laughs]

And then we had the head of the Michigan Blue Cross and Blue Shield plan, Dick Whitmer. But it's a combination retreat and board meeting, and sort of an educational conference.

Chall: How many people are there as a rule?

Hassard: Well, the board membership totals twenty-four, twenty-five, and then there are about fifteen staff people, so around forty.

Chall: Are you on the board?

Hassard: No, I'm not. I never have been. Intentionally.

Chall: You've just been an advisor, counsel--

Hassard: Counsel, been general counsel. I don't need a vote on the board. [laughs]

Chall: No. If they have a problem, they come to you. What were they concerned about mainly this month, this year?

Hassard: Well, the health field is in a state of just about chaos.

Chall: Is that right?

Hassard: And it's close to a chaos that has been very much induced by overreaching by the media--and when I say media, I mean all print media, and TV, and radio--printing just about anything over a period of several years, and it has taken a bad situation and made it worse.

There is a problem of costs. By way of comparison, the cost of a prepayment medical surgical plan for a month forty, fifty years ago was three dollars, four dollars, or five dollars, for a family. I think the first one that my wife and I had was the first Blue Cross plan across the Bay in Oakland, and it was something like less than five dollars a month for complete hospital coverage.

Nowadays, for a family, the equivalent coverage runs $300 to $500 a month. A hundred times more! For an individual, it runs anywhere from $150 to $250. These are costs that are difficult for any family to meet, and it's becoming more and more difficult for employers to provide it as a fringe benefit. They just can't do it.

All sorts of remedies are suggested, most of them totally impractical. I keep being reminded of Prohibition when the people of this country tried to change human nature by enacting a law. It doesn't work, and you can't change human nature by enacting laws relating to health.

There are certain basics that are true of all of us--you, me, and everybody. When we're ill, our health is threatened, we want the best possible care and we don't give a hoot what it costs. That's the last thing anybody thinks about when they're really sick. What they want is a good doctor right now, and they want the latest modalities that are available.

The Effects of Medical Research

Hassard: Well, couple that with the fact that this country spends more money and dedicates more human effort to medical research than the rest of the world put together, multiplied by ten probably. Our government spends billions of dollars every year financing medical research. Our pharmaceutical industry spends billions of dollars a year on pharmaceutical research. There's no country that can even be compared to us, or our dedication to developing new things in medicine and health.

And it's been quite successful for what it was intended, except for cancer. It's made great strides in what can be done about people who have cancer, but a cure per se has not been found, and probably never will be.

But in any event, the results of research over the past, say, thirty years or so have been startling. The practice of medicine today doesn't resemble in any way the practice of medicine as recently as during World War II. Things that we take for granted were utterly unknown or unheard of.

Unfortunately, almost all new--let me use the word inventions (that's never used in health care)--but all new developments in health care are expensive, very expensive. Nowadays, for example, there's one lawsuit just tried by my office recently. It involved a school teacher in Los Angeles who had breast cancer. Her physician recommended a procedure called autonomous bone marrow transplant. That means basically what they do is they go in and take some of your bone marrow out of your bones, then they give you huge doses of chemotherapy. If you survive that, then they put the bone marrow back. And that is--well--

Chall: For breast cancer?

Hassard: For breast cancer, that's right. It's accepted for certain other types of cancer, but it has not been accepted by medicine for breast cancer yet, because it's truly experimental.

In any event, when it's recommended, a woman that has breast cancer, she wants it right now. The cost is $150,000. That's just for that one experimental procedure. The courts, being human, being composed of human beings, think, "My gosh, if it might save the lady's life, I'm not going to stop it from happening," and then they decide that it's covered by some third party payer, and they refuse to believe that it's still experimental. So that $150,000 bill is tacked on for one procedure that may or may not--it will take years before medicine knows--may or may not do any good.

Well, you add up--that isn't the only thing. You add them up, and you can understand why the cost has gone up 100 times what it was forty or fifty years ago. There are 100 times more things done, and they are 100 times more expensive, or 1,000 times more. But utterly unheard of thirty or so years ago, of one pill costing a couple of thousand dollars. And it doesn't work.

Chall: A month of pills might cost $100. It's bad enough that those are just the ordinary--or now-common--pills that I've seen.

Hassard: Yes. So you combine our marvelous research with the overwhelming desire of people when they're sick to have the best of everything, and you can understand why those costs have gone up through the roof, and they will continue to go up. And there's no law that will stop it.

Chall: But the economics of it are that many, many people can't even think in that way, and they go to the county hospitals and they are not given that kind of care. They're given the kind of care that might have been given twenty-five or thirty years ago, that would have been adequate.

Hassard: That is true, but that can be corrected by spending many more billions of dollars per year. You'll not get politicians to vote for that, because they'll have to increase taxes.

There's only one way that the basic problem facing health care today could be solved, and that's to stop research. Become like Canada or England or the African countries, and not do any of it.

Chall: I guess sometimes the research may not be beneficial; there may not be truly benefits available from it?

Hassard: Sometimes they are not, sometimes they are extremely beneficial. In our lifetime, for example, poliomyelitis was eradicated in this country.

Chall: I agree with that.

Hassard: The Salk vaccine. So there are tremendous successes, along with some failures. But in any event, that's one of the things that we talked about for three days at the meeting.

Chall: What did they see? What did the Blues see in this?

Hassard: A clouded future.

The Courts and Special Interests

Chall: Are they going to refuse to pay, cover certain kinds of--?

Hassard: Well, the difficulty with that is that even though they refuse, a court is very likely to rule that they have to pay, and that's what's happening.

Chall: Is that what happened in the case of breast cancer.

Hassard: Yes.

There have been about fifteen decided cases, and I think some thirteen of them have gone in favor of the patient, about two of them in favor of the third party payer. My number fifteen may be wrong, I've just taken that from memory.

But I think--I don't know what's going to be done politically in health care. There will be something, but until somebody comes up with a proposal that makes sense and is affordable, and until the various and sundry special interests (and there are many) are willing to compromise, which is not true yet, nothing's going to happen.

Chall: What are the special interests in this field?

Hassard: They're all over the lot. The researchers, the universities. They are very significant special interests. A university like Stanford depends heavily--in fact, you may have noted in the press it has gotten into trouble recently, overreaching. But research grants in the health field are vital to their economy. That's true of many universities. The pharmaceutical industry.

And the eighties have produced a thing called an HMO, Health Maintenance Organization, not like Kaiser, community-oriented, but stock companies that are to make money for investors. And those investors are one hell of a special interest! [laughs] Do you want me to go on? My list is a lot longer than this, but I think it illustrates.

Chall: Yes, I see. Was it Ian Morrison from Canada who spoke to you?

Hassard: He's located at Stanford, and he heads up an institute of something-or-other, I don't remember the name of it. But he described himself as a social scientist.

Chall: Did he bring any insights?

Hassard: Lots of insights, but no solutions. Same with Enthoven. Enthoven is, of course, an economist who specializes in health care, I guess. He talks like an economist, which means I'm always befuddled. Economists are so certain about everything [laughs], and they are so wrong 99 percent of the time! It's really baffling.

Chall: Well, I'm sure you had a stimulating meeting.

Hassard: Yes, we did.

Chall: But it leaves you all with the same sense of chaos?

Hassard: Yes. It leaves me, at least. And I don't see anything good on the horizon.

Chall: It will take a considerable amount of compromise on the part of a lot of people, is that right?

Hassard: Yes. And I think it's going to be forced upon the public to redirect their priorities of what should be spent out of the gross national product for various things. I think education is in just as deep trouble as health. We waste an awful lot of money on education and don't produce very good scholars. In fact, kids that can't read or write. And that has to be corrected. There has to be some adjustment in the health field. But until the public's ready to make those basic reordering of priorities, I don't know what's going to happen.

Chall: That requires quite a bit of leadership, to be able to focus in, or to be willing to focus in on the hard problems.

Hassard: [laughs] Go to Washington sometime and sit in the gallery, or go to one of the committee hearings, and you'll find that it's not only not there, it's the opposite. Everybody's grabbing for themselves.

Chall: So, that was the retreat.

Hassard: Yes.

Workmen's Compensation

Chall: I have a friend who works with Safeway, and his entire job is dealing with the health problems and the workmen's compensation, and the cost, which has apparently gone out of sight.

Hassard: Well, it's gone out of all rhyme or reason. I was heavily involved in workmen's compensation in California when I was active with the California Medical Association, particularly back in the thirties, forties, fifties, sixties. The medical care aspect of workmen's compensation, at least in California, started off on the wrong foot way back in the second decade of this century, and has never gotten straightened out.

Chall: What was the wrong foot?

Hassard: Well, the wrong foot was--well, first of all, it's kind of unbelievable today but it happened, the medical profession looked upon workmen's compensation with horror. They thought it was going to send them all to the poorhouse, and they boycotted it. As the net result, the first few years of workmen's compensation in California, the medical aspects of it were relegated to a few renegade physicians who didn't go along with the overwhelming majority. They got rich. [laughs] But they didn't establish any rational medical care system.

And it got stuck that way, for years. When I came along, one of the projects I got involved in for the California Medical Association was to try and upgrade both the financing of medical care under workmen's compensation and the quality of care given to the workmen.

It was a terrible job. Every issue didn't have two sides; it almost always had four sides: the physician, the lawyers, the workmen's comp insurance companies--or five sides--the employers, and the unions. And normally, in any proposal or any issue, you had five different approaches.

What could you expect as a result? We got what you'd expect: namely, a mess. And it's just gotten worse and worse.

Chall: Never been cleared up, in your estimation?

Hassard: No. There was a major effort made in the last couple of years in Sacramento and the legislature to try and modernize the workmen's compensation laws, but the legislature can't bring itself to doing anything really realistic, and they do little patchwork things, and the governor promptly vetoes, because they are patchwork.

Chall: And the cost too high--

Hassard: Well, we're one of the worst states in the union on that. Costs are high, and the benefit's low. The money gets wasted.

Chall: Wasted on what, administration?

Hassard: All kinds of things. Administration, poor medical care, legal profiting. The unions, having obtained over the years through legislation an expansion of the concept of an industrial injury to the point where it now covers almost anything, including if you feel stressed about your job--well, who doesn't feel stressed on the job? That's now an industrial injury. The expansion of what is covered by worker's comp, mostly through union pressure, has increased to the point where it's impossible.

Chall: I guess that's why a company like Safeway is taking a very close look at it. What they can do about it I don't know.

Hassard: They can just try. Of course they have to take a close look, because it's a terrible cost.

The Relative Value Study: CMA Pioneer Study, 1956

Chall: You talked about the relative value study ten years ago with Mimi and the end of it in California in 1974.[1] But you said that it had been used by others--the workman's comp people, the unions.

Hassard: It was used by everybody.

Chall: It was used by everybody, except that it was--

Hassard: The Federal Trade Commission took a dim view of it, but no, the first relative value studies were started in California in the 1950s. In fact, I can get you a [gets up to look for papers]--

Chall: You went over that quite thoroughly with Mimi. I just wondered if there was any update on it that you would want to discuss.

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[1] Hassard, Fifty Years in Law and Medicine, pp. 71-79.

Hassard: Well, just a fascinating update. I can give you this. This is probably something that should go into The Bancroft Library. [retrieves copy of study, returns to table] This is the second relative value study. The first one was not as elaborate as this, and not printed, but this was issued in 1957. It explains itself. You can have it.[1]

Chall: Thank you.

Hassard: I'm not supposed to have that. The people who were at the Federal Trade Commission ten years ago are all gone, and the new ones there never heard of it, so it doesn't matter.

Chall: If you say it's used, you mean that it's still used as a concept?

Hassard: What really--I guess I went into it with great detail with Mimi.

Chall: Yes.

Hassard: The cause was the fact that insurance companies were indemnifying the fee schedules that were all over the lot, and most of them had no relationship to the realities of what the costs were. Some things were over--they were overpaying some things and grossly underpaying others. The concept of a relative value study was an attempt to even the things out. It was terribly successful.

The thing that I find irritating, California pioneered the concept of relative value studies, the California Medical Association. Until we were stopped by the Federal Trade Commission, we, the California Medical Association, printed and sold almost a million copies to every state in the union. Not through sales programs, but just people hearing about it and writing and wanting it.

Then a few years ago, at Harvard University, somebody learns of the term "relative value," and they start a relative value study thirty years after we did it, and they say they were pioneers. And now, every publication east of the Hudson River credits Harvard University with developing the concept of relativity, which is--of course, they never heard of anything that happened out in the West.

Chall: Nobody's corrected them?

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[1] Relative Value Study, Second Edition. California Medical Association, November 10, 1957.

Hassard: It's useless.

Chall: Isn't that interesting?

Hassard: How are you going to get the New York Times to pay any attention to anything west of the Hudson River? Pittsburgh, Pennsylvania is so far west, they won't even pay any attention to it.

The Harvard Relative Value Study

Chall: As far as you know, is the relative value concept being used?

Hassard: Yes, it's being used by Medicare now, and government--Congress adopted it. Actually, the Harvard study attempts to do something that we found to be impossible, and that is to try and figure out what is the actual cost to a physician of doing a certain procedure, say an office visit. What is his basic cost? We started out trying to do that, and we gave up, because costs are all over the lot.

Now, the Harvard study is supposedly a resource-based relative value study, meaning it's based on the resources that have to be used to perform the procedure, which is cost. They think they've done something great; I don't.

Chall: But I know that you all thought this was a valuable piece of work.

Hassard: I think it was valuable to the public. It wasn't of any particular value to the physicians as such, but it was of tremendous value to the purchasing public, and to the various third party payers that were paying for the bills.

Chall: So this is the basis on which Medicare and Medicaid--

Hassard: Well, Medicaid just doesn't pay anything anymore. [laughs]

Chall: It doesn't matter how it--

Hassard: How it tells about it.

Chall: But Medicare is certainly changing its payments to physicians--

Hassard: That's right, on the Harvard resource-based RVS.

Medicaid: A Noble Experiment That Has Failed

Chall: Well, then that gets us into my next question, which was on Medicare and Medi-Cal reimbursement plans.

Hassard: Medi-Cal--Medicaid in California, which is called Medi-Cal--has reached the point of absurdity. And it does not compensate any of its providers, be they physicians, hospitals, pharmacists, or what have you, anything near the cost of doing business. And it keeps expanding as our population keeps increasing. As people pour across our borders, the costs of Medi-Cal keep going up. It's probably one of the worst of all examples of the high cost of health care, and the fact that the state's cure for that high cost is just not to pay.

So I think actually poor people--well, I think a noble experiment has failed. In the 1960s, the noble experiment was the concept that under Medicaid, people that had previously been relegated to what were called alms houses originally, to county hospitals, could now be put into the mainstream of health care, and not be forced to sit on benches in the waiting rooms of county hospitals.

That mainstream concept was noble, but it has failed. The state of California wasn't willing to pay for it.

Chall: Yes, it's the cost.

Hassard: It's the cost. So now everything's back down, and the people that used to be county hospital patients are probably getting poorer care, at least in the county hospitals, and in the urban areas of the state. The county hospitals had students in postgraduate training--they were teaching institutions; they provided a reasonably good quality of care. But what the poor people are getting now, God only knows.

Chall: I know at least at Highland, from what I read in the Oakland Tribune, it is struggling, trying to do the best with some very dedicated staff.

Hassard: The same is true of San Francisco General Hospital.

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Hassard: One of the problems that has been created by the government's unwillingness to pay going rates for hospitalization, medical care, pharmaceuticals and so forth, is that the providers of those services have shifted costs onto the non-governmental payors. That cost-shifting, which goes on every day all over the whole United States, means that the governments aren't saving money, they're just forcing somebody else to pick up the slack. So the overall result is just as costly as if the government were paying its own way to start. People are kidding themselves.

Chall: And are there any plans ahead for that, as far as you can tell--what you know about changing laws or benefits, or what the insurance companies are doing?

Hassard: Well, speaking of California, it's just going to get worse. Our budget deficits are not going to go away, not until the current depression ends, which will probably be at least ten years or so ahead. So there's going to be a shortfall every year, and the cure is going to be just as it was this year to cut some more expense out of Medicaid, or Medi-Cal. So all I can see is the bad situation getting worse.

The Impact on the Doctors

Chall: What does that do to the medical profession, the doctors? What's the impact upon them?

Hassard: Various impacts. One thing that has become most noticeable in the last several years is that there's been an exodus of physicians from private practice into--they call it formalized practice structures--Kaiser, HMOs, big clinics--where they can have a take-home salary, and not have to struggle with Medicaid and Medicare and 101 other things they have to struggle with.

And it has also caused many physicians that used to love their work now to get up in the morning and not want to go, because practicing--the economic side of the practice of medicine is one hassle after another. It's very sad.

Chall: It's affecting solo practice, at least.

Hassard: Well, it's affecting every type of practice.

Chall: Do you meet doctors who feel this way, as you go around meeting people?

Hassard: Yes. A few of them are still doing fine. They are getting along excellently, they have big practices, they charge their patients and the patients pay them, and then the patient has to worry about trying to get recoupment. These are physicians--my observation--that are top-notch specialists in key specialties.

Chall: What's happened is that the specialists are doing all right?

Hassard: You can't say the specialists are doing all right, because many of them are not. The outstanding specialists, who are both competent in their field and have good personalities, and attract a following amongst their patients. They're the ones that I'm talking about that are still doing great. And they can ignore all the red tape and stuff. But that's a small, small percentage of the entire profession, very small. And not all specialties, either. Pediatricians are not.

Chall: Ophthalmologists may be doing better, because as people age they have problems with their eyes.

Hassard: They're doing great. Yes, and there have been such vast improvements in techniques. And some of the heart surgeons, people in the dramatic side of medical care that are very competent are doing fine.

Chall: They're also sort of at the cutting edge of technology in medicine, where people want it today, as our population ages.

Hassard: Yes.

Chall: Anything else to say on that subject, which is a big and broad one?

Hassard: Well, you can spend days on it, but I don't think it would add anything.

The Board of Medical Quality Assurance

Chall: You talked to Mimi about the Board of Medical Quality Assurance that was coming into being about the time of your interview.[1]

Hassard: Well, it was part of what we call MICRA, the Medical Injury Compensation Act. Again, it was a normal consequence of controversial legislation. Everybody had to give something, and in quid pro quo, what the medical profession had to give in order to get a majority of the legislators to vote for the liability reforms, was to reform the Board of Medical Examiners as it was previously known, not only to change its name--that was just cosmetic--but to change its direction in controlling bad practice, keeping tabs mostly of things that previously would just be unknown.

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[1] Hassard, Fifty Years in Law and Medicine, pp. 110-112.

For example, the MICRA--well, for the first time, mandated that if a hospital--let me use the vernacular--kicked a physician off the medical staff, the hospital then had to report that fact to the Board of Medical Quality Assurance. Previously, there was no reporting requirement, so the board would never know about it, except by accident. That was one of the many changes.

The membership was broadened to include more non-physicians than before. Generally, it was restructured to be more focused on protecting the public from incompetent or dishonest physicians than before.

Chall: How has it been working out?

Hassard: Not very well.

Chall: Oh, really?

Hassard: Just like everything else government does. [laughs] There's no exceptions. The problems are the same as with everything in government. The board has never been able to get adequate financing to have a big enough staff to follow up on the information that it gets. The attorney general's office has never had enough deputies assigned to the board to be able to process complaints rapidly. It has suffered from the same thing that the people of southern Florida are suffering from now, that the federal government can't act to take care of their immediate necessities. Bureaucracy is the same everywhere.

Chall: So it got mired.

Hassard: Yes.

Chall: So you don't look upon it too favorably, then, I take it.

Hassard: Oh, I can't say--the idea is all right, but one thing I've learned over these many years is that you don't really solve problems by throwing government at them.

Chall: Was the medical profession able to handle this without the government? I mean, people do think that the medical profession wouldn't deal with its unqualified physicians.

Hassard: It wouldn't have the ability to do so without the power and force of government authority, I have to admit that. They could try, but it would be very, very difficult. The problem as I said is not just in medical care or health, or licensing. It's a problem across the broad spectrum of government in this country. We would have to make some basic changes in the way we employ people in government, what we require of them after they are employed, what we do to those that are useless. As of now, we set them up for life.

Something between a spoils system and civil service is necessary, something in which the economic functioning of government agencies is more--not only under more control, but is managed better. But that's-- [laughs] I think I'm just talking Utopia.[1]

Chall: All right, well, I think maybe we've updated some of the legal and policy issues, if you have anything else to add we can add it now.

Hassard: Not at the moment.

Chall: All right. You have the freedom to add it when you're reviewing, if you feel like adding a paragraph or two.

Hassard: Okay.

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[1] See chapter VII, page 190, for later discussion of the Medical Board.

VII HASSARD, BONNINGTON, ROGERS & HUBER

Editor of a Book on Malpractice

Chall: Now, some questions I have here under the next heading of Hassard, Bonnington, Rogers and Huber have to do with some hints that a few of your colleagues have passed on to me. I was told that you wrote something called The Anatomy of a Malpractice Suit, that you were the author of such a study or book.

Hassard: I was the editor of a book that was published by Medical Economics, Malpractice something-or-other. I've got a copy here, I think. Well, it's a series--it's actually a compilation of a series of articles that appeared in Medical Economics over a period of time, some of which I co-authored and some of which I didn't. [moves away from desk looking for book] This was published fifteen or twenty years ago. It's here somewhere. No use wasting time right now.

Chall: Okay. But that's the basis for the so-called Anatomy of a Malpractice Suit?

Hassard: That isn't the exact title.

Chall: Maybe you can get it for me then when you're editing or reviewing.[1]

Hassard: Yes. As I said, it's a compilation of a series of articles on various phases of medical malpractice, liability, that were written for and published in Medical Economics. They were written not to be technically perfect, but they were written to get some points across that physicians could understand. They were "for instance" type of articles. They were mostly fictitious; we dreamed them up. [laughs] They were examples of what happened if a physician did or did not do a certain thing.

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[1] Howard Hassard, LL.B., ed. Medical Malpractice: Risk Protection Prevention, Medical Economics Book Division, Inc., Ordell, New Jersey, 1966.

For example, always making people wait an hour or more in his waiting room. I'm just picking that one out of the air right now. We developed that that's a good way to get yourself sued over a period of time, because you're irritating everybody that's sitting there. It was not a profound book, but it was one that was supposed to be useful for physicians.

Chall: Did you get any feedback on whether or not it had been useful? Get royalties or whatever?

Hassard: No, I just got a flat fee for doing that. I really wasn't doing it for the money, just doing it to help get some information to the physicians in a way they could understand.

Oh, I kept getting feedback all over the country. When we'd go somewhere and meet a physician, he'd say, "Oh, I read your book."

Chall: Well, that's good. That's the kind of feedback you want. When you write, you always want to be sure that somebody's going to read it.

Hassard: Yes.

Chall: Now, I was told that you had dictated a history of the firm.

Hassard: Yes, I saw that, and that must have come from [Robert] Huber. I have never dictated a formal history of the firm. I have at times in the past given talks to the young partners here some years ago about how the firm developed, and there may be--I'm pretty sure there is--a tape of one of the talks I gave that's around somewhere, but I don't know where it is.

Chall: Do you still do that? Do you still talk to the young partners?

Hassard: No. [laughs] I get tired.

From the firm's
autumn 1988
newsletter

HASSARD, BONNINGTON, ROGERS & HUBER

PART TWO

The 40s 50s & 60s

by Diane Peterson

During the 1940s, 1950s and into the mid-60s, the firm then known as Peart, Baraty & Hassard continued to practice law on the 18th floor of the 111 Sutter Building. The partners in the 40s were **Hartley F. Peart**, **Gus L. Baraty**, and **Howard Hassard**. Their beginnings with the firm have already been described in Part One of this history. So let's turn our attention to some of the associate attorneys who began arriving once every 3-5 years, and the important roles they played in the 40s, 50s and 60s.

Joseph S. Rogers joined the firm in the 40s, shortly after service in the Air Force during World War II. He was hired to work with Gus L. Baraty preparing wills and handling probates and trusts for numerous persons whose business interests the firm had previously represented over the years. Joe had received his BS in Business Administration and in 1942 his J.D., from the University of Southern California. He was admitted to the Bar in 1942. In the years 1951-53 Joe was on a leave of absence having been recalled for active duty in Korean War. During that time, he was with the U.S. Air Force as a commanding officer of the OSI at Hamilton and other air force bases. By 1956, along with his other work, Joe was in charge of the firm's client, American Cancer Society, California Division. He played a major role in its development of charitable giving, estate bequests, and fund-raising so that by the mid-80s, the firm had represented the Society in over 5,000 estates in which it was named a beneficiary.

Although he was in the office daily, **Gus Baraty** suffered a stroke in the 60s and was in semi-retirement by this time. **Joe** was then in charge of all of the probates for the firm. He had also gained additional expertise in business and real estate law over the years. Gradually, he began acquiring numerous clients in these areas, many of whom are still clients today.

Alan L. Bonnington, was a former Marine Corps Officer who first joined the firm as a law clerk in the late 40s. As a clerk, he was located in the library when not running errands for the firm. During the 40s, 50s and 60s, the atmosphere was much more formal. In the 40s, Gus Baraty had a dress code which required clerks and attorneys to wear suits (including the jacket), white shirts and ties in the office at all times, and hats on the street. First names were seldom used.

Al received his B.S. in 1943 and in 1947 his LL.B. from U.S.F., graduating first in his class. In 1948 he was admitted to the California Bar and became an associate attorney with the firm.

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After a varied practice like all young lawyers of the time, he became a litigator and by the late 50s was specializing in medical malpractice, defending physicians. On January 1, 1956 he became a partner of the firm. By the late 60s he was head of the firm's litigation practice. Sadly, he died of cancer in 1972 at the age of 49.

Robert D. Huber joined the firm in 1949 as a law clerk with a variety of responsibilities, including messenger services. Delivering fruit from Hartley Peart's ranch to various clients of the firm was one of the ways he became acquainted with the firm's clients. In 1950, **Bob** received his J.D. from U.S.F. and was admitted to the California Bar in 1951. One week later, he had his first court trial for the BME, a collection agency of the San Francisco Medical Society, where he maintained a separate office for 14 years. The firm was small in those days so although **Bob** would ultimately specialize in medical malpractice litigation law he worked in many other areas in his early years with the firm: collections, medical malpractice, personal injury. For many years, **Bob** attended CMA meetings and participated in many of its activities, as well as those for the American Heart Association. Gradually **Bob** worked into the medical malpractice defense field, defending doctors from Fresno to Yreka, on behalf of one of the firm's major clients of the 50s and 60s, American Mutual. Trials would take place in many outlying counties and traveling six months a year was required, trying case after case, totaling approximately 200 jury trials. This was also the heyday of the passenger railroad trains. Thus, one of the firm's major clients was The Atchison, Topeka & Santa Fe Railroad. **Bob**'s active participation in defending these clients was yet another phase of the role he played for the firm. A former Mill Valley mayor, **Bob** has also been very active in civic and political affairs.

Salvatore Bossio was hired by the firm as an associate on December 5, 1955, about a year after Hartley Peart's death. **Sam** had just been released from the U.S. Army, anxious to find employment in whatever capacity he could. He had received his A.B. in 1951 and his J.D. in 1953, from Stanford University. As a fledgling associate attorney, his duties were numerous: part-time librarian; messenger (which provided one kind of exposure to clients); court filings (which proved invaluable in getting acquainted with County Clerks and members of the Sheriff's Office); and, of course, lawyer! In those early years, **Sam** wrote innumerable opinion letters in response to inquiries Howard Hassard had received from a variety of sources. He became a law and motion specialist in medical malpractice long before attending or taking a deposition or a trial. In those days, the law and motion calendar call was at 10 a.m. and all individuals with matters on the calendar had to appear and sit through the lengthy calendar call. While there observing, **Sam** became broadly acquainted with legal subjects of a diverse nature. As time moved along, so did **Sam**'s responsibilities and for a while he served to carry the briefcase for Mr. Hassard at Blue Shield board meetings. Blue Shield was then known as California Physicians'

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Service. This exposure broadened so that for many years he participated with Blue Shield employees in the drafting of contracts. From time to time, he also performed services for Swinerton and Walberg, the Santa Fe Railroad and others.

But it was the explosion of medical malpractice litigation that came to occupy all of his time and determine his destiny as a lawyer with the firm. The firm's client, American Mutual, had instituted a program in the 40s for the defense of doctors in California. Joe Rankin's law firm handled the defense medical malpractice for the Counties of Alameda-Contra Costa and Duncan O'Neal for Santa Clara County. Our firm was responsible for the remainder of Northern California, from Fresno to Yreka, including the coastal and valley counties. **Sam** thus joined Bob Huber and others as one of the firm's four medical malpractice litigators in the 50s and 60s. He, too, traveled extensively throughout California for trials and depositions. [In 1973, American Mutual withdrew from medical malpractice insurance. Thereafter, medical malpractice insurance became fragmented with various underwriters, including Argonaut and The Travelers which only remained in this business for a few short years. In 1975, the "bedpan mutuals" were formed to replace the two insurance carriers under the two separate programs. MIEC took over the Argonaut areas, and NORCAL took over the remaining Northern California counties previously insured by Travelers. Both MIEC and NORCAL have remained clients of the firm.]

David E. Willett graduated from Hastings in 1958 and entered the Navy immediately after the Bar exam. He was admitted to the Bar in absentia and served as a Navy lawyer until April, 1962. At that time, he joined the firm which consisted of four partners, and these fellow associates: Joe Rogers, Bob Huber, and Sam Bossio. Dave replaced Tal Lindstrom, a multi-lingual attorney who took a job in Africa.

While an associate, Dave handled a variety of work, much of it outside the health field. He, too, handled some of the Santa Fe cases, including the defense of one engineer who hated trucks and had to be defended on three separate occasions! Much of his work was in the construction field. After becoming a partner in January of 1968, more and more of his work fell into the health field, working closely with Mr. Hassard.

The staff of the 1950s and 1960s consisted of a receptionist, a law clerk, and from five to seven secretaries. In those days, each attorney had his own secretary who took dictation, did typing, billing and paralegal work. Thus, as the number of attorneys increased so did the number of secretaries.

The receptionist still operated the cord switchboard. She also handled the firm's client cost account and operated a "wet copy" machine which the firm acquired in the late 1950s. To operate the machine, one placed the original document in a glass above a tray filled with a photographic liquid. A sensitized paper was

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placed in the tray, the button pushed which caused a light to transmit the print onto the sensitized paper. To obtain a copy, one placed a dry sheet of plain white paper onto the wet sensitized paper, smoothed it down and removed it. One could do this for four or five copies but as each copy was made, the print would become lighter. By the early 1960s Chester Carleson introduced his creation, the Xerox machine, and the firm eventually leased one of the smaller models. Although it had its limitations (still could not copy books), it was the most innovative machine of its time and a great improvement in one area of office productivity.

Another improvement in office equipment of the period was associated with the typewriter. They were still big and cumbersome but had the great improvement of electricity. Because of their size, they were placed in a large "well" in the center of the desk with little room on either side of the desk for working area.

By the late 1950s the offices were becoming crowded. **Ms. Lee Fertman**, hired as a secretary, became the office manager and Mr. Hassard's secretary. As such, she had her own office and telephone, as did most of the attorneys. (She retired in the late 1960s after 27 years of service with the firm.)

The receptionist and five other secretaries (aside from Ms. Fertman) occupied what used to be called a "bull pen" -- a large, uncarpeted room with a high counter separating it from the reception area. There was no air conditioning, of course, and when the windows were opened, papers would blow around the room. Four of the secretaries shared one phone, and the receptionist would call out the name of the secretary when it was for her. The private offices of Messrs. **Hassard**, **Baraty** and **Rogers** surrounded the "bull pen" and they each had outside terraces. **Mr. Bonnington's** private office was located "down the hall" in the "new" space, after he became an attorney. **Bob Huber** and **Sam Bossio** were located in and near the library and did not initially have offices.

While few changes occurred in the 1950s, the 1960s brought many changes which were to have some effect even into the 1980s.

First, the 1960s brought two members of the staff to the firm who have remained for more than 25 years. Linda (Ferring) Gamblin arrived in 1961, the year before Dave Willett, and Diane (Marsh) Peterson came in 1963, about one year after Dave Willett joined.

Linda Gamblin (then Linda Ferring) had worked for the FBI in Washington, D.C., and then for a law firm in Toledo, Ohio, before relocating to San Francisco. In December 1961, **Linda** was hired to be **Robert D. Huber's** legal secretary. A few years later, when Joan Triplett (secretary to Sam Bossio and calendar clerk for over six years) left the firm, Linda undertook the master calendaring responsibility. For more than 20 years she was to

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make a major contribution by being the firm's master calendar clerk, as well as **Bob Huber's** secretary. [Due to the firm's rapid expansion in the mid-80s, the master calendar was put on the computer and turned over to the Office Services Department. On occasions, Linda continues to act as one of the back-ups for this important responsibility.]

Diane (Marsh) Peterson received her Bachelor of Science in Business Administration from College of Notre Dame. The following weekend she came to San Francisco to begin her business career. After a short employment with The Bechtel Corporation, Diane was hired on October 21, 1963 to be legal secretary to **Gus L. Baraty** and **Joe Rogers**. **Mr. Rogers** called her "Miss Marsh" until she married in 1971. Try as he may, **Joe** could never remember her married name so everyone convinced him it was time to call her **"Diane."** Needless to say, the office atmosphere was still somewhat formal until the early 1970s.

Under the tutelage of Joe Rogers, **Diane** developed skills and experience first as a legal secretary, and by 1965, in the field of office management. It was at that time that Joe Rogers became the partner in charge of office operations. For almost 10 years, **Diane** assisted him by interviewing and hiring office staff; meeting with salesmen and preparing comparative studies of products and services; preparing research reports on various aspects of office efficiency; and in 1967, **Diane** was given the additional responsibility of the firm's client "cost" account when the receptionist of 10 years left the firm. At the same time, Diane was gradually developing an expertise in probate law by handling, as a legal secretary, much of the paperwork for estates being probated by Joe Rogers, as well as those in which he represented the ACS. (In 1983, after 20 years as a legal secretary to **Joe Rogers**, **Diane** was to become the firm's first secretary to make the transition to legal assistant and the first legal assistant in the Business, Probate and Tax Group.)

The 1960s also brought changes which had a major effect on the firm. Partnerships for Joe Rogers, Bob Huber and Sam Bossio came in January of 1965. In July of the following year **Gus L. Baraty** died and in December of that same year **Peart, Baraty & Hassard** moved its offices to the new Wells Fargo Building at 44 Montgomery Street. While the firm initially only occupied a portion of the 35th floor, the offices were quite spacious. For the first time the receptionist and each secretary had her own station, and everyone had his or her own telephone! After the move, the "well" desks for secretaries were gradually replaced by the more efficient L-shaped desks, allowing more working space for greater productivity. The private offices of both associate attorneys and partners were large. All of them had at least one window. The reception area was a little larger but the philosophy in those days was that "a client should never be kept waiting" so seating was only for about six people. No conference room was provided because it was the custom in those days for attorneys to conduct client meetings and depositions in

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their privates offices. Gradually, as this custom changed, depositions were held in the library, one of the largest rooms in the office. As the offices expanded, a conference room was added.

Another luxury at the Montgomery Street offices was a first-time coffee room along with its amenities. Formerly, employees took their breaks at a cafe in the lobby of the 111 Sutter Building, purchasing their own refreshment. The first coffee room was also a supply room and later a copy room. Under Mr. Rogers' management, fringe benefits for staff and attorneys were added or increased. A regular salary increase policy (formerly it was a semi-annual bonus system, based on the firm's profitability); Keogh Plan for employees with three years or more of continuous service with the firm; and increased vacation to three weeks after three years were all additions to the compensation package of the late 60s.

Another change in the late 60s was the firm name. There were two name changes from Peart, Baraty & Hassard, ending with the present Hassard, Bonnington, Rogers and Huber by the end of 1969.

In the late 60s (and early 70s) as the firm began expanding and Joe Rogers' clients became more numerous, Joe needed some assistance in managing the office operations. It was then that the partners established a Management Committee. Its first members were **Howard Hassard, Joseph Rogers**, and **Dave Willett.**

Many associate attorneys came and went during the 1960s. By the end of the 60s, the firm had grown to six partners, Messrs. **Hassard, Bonnington, Rogers, Huber, Bossio** and **Willett** plus three associates.

We conclude our history here, just entering the 70s. When the 70s and 80s are truly history and someone continues this work, it can be shown that as we moved into the 1970s the firm hired its first full-time office manager and first librarian; set up the beginnings of its first billing and word processing departments; began introducing high-tech equipment in all phases of office operations and by the 1980s began hiring legal assistants as another large group of office staff, and, in general, changed the entire scope of what was once, "Peart, Baraty & Hassard."

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EDITOR'S NOTE: My thanks and appreciation to Howard Hassard, Joe Rogers, Bob Huber, Sam Bossio, Dave Willett and Linda Gamblin for their generous contributions which greatly assisted me in the preparation of this history.

- D. Peterson

The Corporate Culture and Changes in the Practice of Law

Chall: Is there a kind of corporate culture at this firm that you would like to document for all the new people that have been coming in? Or does that get lost as it gets--as you expand so?

Hassard: No, I don't think it gets lost. Of course, the term "corporate culture" was nonexistent--[laughs]

Chall: It's a new term.

Hassard: It's a new term, and as I understand the usage of the term corporate culture, it means the personality of a business unit, developed over a period of time, because people are doing the same things and have the same common interests and so forth. To that extent, this firm has always prided itself on trying to be competent--which is not unique; any good law firm should do that. I am hesitating because my perspective may not be that of younger people here.

Chall: What is your perspective?

Hassard: Well, mine is that we have tried to be good practitioners, trustworthy, and to avoid splashy types of things. Instead of seeking to be in Herb Caen's column, we have tried not to be in it. That's maybe an extreme way of trying to express myself. But I don't know today whether we would be considered stodgy, because the practice of law was entirely different fifty-five years ago. There's no resemblance. Same with medicine. I may go into that in a moment.

Lawyers and physicians, and for that matter, priests, were considered to be professionals, were considered to be serving their patients, their clients, their confessants, and they were considered to be false to their calling if they violated the rules of professional conduct. It was considered--I can recall for years that if one lawyer gave his word orally to another lawyer, he would never go back on it, no matter what happened. Nowadays, they do it all the time.

When I first started practice, the office I was in, if I had gone back on my word, I would have been summarily fired. You had professional standards that you were supposed to meet, and you just did.

Chall: Is that going back on your word to another--

Hassard: To another lawyer.

Chall: In the firm, or anywhere?

Hassard: Anywhere. You just didn't.

Chall: And now you feel that's not so anymore?

Hassard: It's not so at all.

Chall: Even in this firm?

Hassard: I don't know about this firm. And I hope it's still true in this firm. I know it isn't true generally.

Over the years, and this has happened in accounting, it's happened in medicine; unfortunately it's happened in the practice of law: it's gradually changed from a profession to a business, or a profession to a trade, with different values, different outlooks, different goals. Of course, we all wanted to earn a living, but we didn't become lawyers to get rich.

Chall: What other aspects of the profession were different from what you think they are now?

Hassard: Well, the emphasis on money, is quite different. The way I see younger lawyers viewing the legal activity as, as I say, a trade or a business. Lots of things that just were a result of a different basic outlook.

When I first started practicing, a lawyer who changed jobs or changed places of practice was kind of looked down upon. That was considered an admission of failure. You didn't do it. Nowadays, they jump all over the place. They'll leave one firm to go to another one that offers them a greener pasture. It's a different goal. But that's only one example of dozens and dozens that I could give.

Chall: Of course, there's considerably more work in the law, more aspects of work that attorneys do now than they did fifty years ago.

Hassard: Oh, yes. Well, just terrific changes, just in the daily work matters. Fifty years ago, a legal secretary pounded a typewriter all day long, and put carbon paper in the typewriter and made copies. About the fifth carbon was always so dim, you could barely read it.

Chall: She never made a mistake, either.

Hassard: The average lawyer under fifty doesn't even know what carbon paper is. [laughs] When you say carbon paper, you might as well be talking in Chinese. They don't have any idea what you're talking about. And if you were trying to reproduce copies, you had to do it on a mimeograph, one of the most awkward machines ever invented. [laughs] Oh, it was something. And the various aides to getting work done were primitive, compared to what we have now. You look around our office now, all you see is computers.

Chall: That's right. And you have a whole floor practically devoted to the machines.

Hassard: Yes. What they do baffles me, but--[laughing] But it sure changes--. Also, this is not a change in equipment or mechanical aides, but a change in the nature of the practice of law: again, when I first started, most lawyers practiced either alone or with one or two associates. There were very few "firms," and by today's standards they were very, very small. Ten or fifteen lawyers in one office was a giant. The entire nature of practice has completely changed.

Chall: And now there are firms that are all over--

Hassard: The world, yes. Hundreds and hundreds of lawyers, and they're factories.

Chall: Now, in your firm, as I understand it, in the sixties there were eight or ten attorneys.

Hassard: That's about true.

Chall: And then I think in the seventies, there were ten or twelve. In the eighties, I understand from--maybe it was your book with Mimi--that there were maybe fifty attorneys. And now, according to Mr. Huber, there are 100 or so.

Hassard: I don't think there are 100. It's a little above fifty.

Chall: Maybe it's 100 with staff.

The Impact of the Asbestos Insurance Cases

Hassard: Our staff increased rather dramatically in the early 1980s, maybe closer to the mid-1980s, when asbestos cases became prevalent, and sort of out of the blue, we were asked by a British company, Commercial Union, to represent Commercial Union in the asbestos claims that it was processing as an insurer. There were hundreds and hundreds of them around here.

Many, many of them were arising out of Mare Island during World War II when the navy was building ships and using asbestos all over the place. But that suddenly put us in the position of having an impact of something like 500 to 1,000 cases all at once, and going in. So we had to hire new people quickly. And then it's gradually gone downhill since then.

We knew it was temporary. I was hoping it would be more temporary than it is, because I hate to see people getting so badly hurt, financially hurt, by things that are not their fault. But it is gradually working down. Our original client, Commercial Union, finally folded. It didn't go bankrupt, but it pulled out of the United States.

Chall: Had you handled most of the cases by then?

Hassard: I really can't answer that. I've had no direct responsibility for the asbestos work we've done.

Chall: I guess people were really hurt by asbestos--but it took twenty or more years before the dangers of asbestos were discovered. I think some firms apparently understood that it might be hazardous, but it was difficult to be sure.

Hassard: Well, I remember when one of the more prosperous, larger San Francisco businesses was called Western Asbestos Company. And it was proudly in the business of selling asbestos, to anybody that would buy it! Not only was it not known that it was harmful, it was not known that there was anything likely to be harmful about it.

Chall: Now, what about civil rights, or tax laws? Has that made a change? Even some of the wars.

Hassard: No. You're talking about impact on the firm?

Chall: Yes.

Hassard: Wars have not had any particular impact, plus or minus, as far as I'm concerned. And of course, my major experience is with World War II. World War I was long gone when I started. [laughs] And then the subsequent Korean and Vietnam wars--

Long-Term Stable Clientele

Hassard: The nature of the practice of this firm has been such that it has been reasonably stable, regardless of peripheral events. We've always had a substantial insurance defense practice. It changes from time to time over the years. When I first started, there was really no such thing as malpractice insurance as it's known today, but we represented several of the larger liability companies, and several life companies. We also represented the Santa Fe Railroad; it was in those days getting sued in San Francisco a lot.

So we had a substantial liability defense practice. Our firm started representing the California Medical Association during World War I in 1915, so we've had a substantial medical-legal practice ever since then, including not only the California Medical Association but a number of other medical organizations, specialty societies, local medical societies, and that sort of thing.

We started representing a major construction contractor also during World War I. It was then called the Lindgren Company; it's now called Swinerton and Walberg Company. And we've represented it and its affiliates, and other construction firms ever since, so we've always had a substantial practice in the construction field.

Each of those areas is relatively stable. Construction is the most volatile of the group, and it's been terribly badly hurt the last couple of years.

Chall: You mean hurt financially, economically?

Hassard: Yes. Having to lay off people, which is very sad to have to do. What's called monumental construction, that's buildings like this one, just about ceased to exist a couple of years ago. Throughout the state, I don't see any hope for a long period of time, because every city in the state has major vacancy problems.

Chall: I think all over the United States--

Hassard: Yes, it's true. Some places are more overbuilt than San Francisco.

Chall: That means that the business that you have, handling the construction firms--

Hassard: It goes down. It's low right now. It'll change, but not in a hurry. Well, we have clients in other fields, but those are the only ones that come to my mind that we've had over a half-century or more continuously.

Criteria for Associates and Partners

Chall: Mr. Huber, I think, gave me this pamphlet on your firm, simply titled Hassard, Bonnington, Rogers & Huber.

Hassard: Let me take a look at that.

Chall: There's no date on it, so I don't know when it was published.

Hassard: [laughs] Real professional job.

Chall: It's a very fine professional job, and the pictures are good.

Hassard: Well, it's since 1984, because it has the photograph of this building on the front page.

Chall: I see, that's a good date.

Hassard: I've seen this, but I didn't have any--

Chall: Your picture is in there. Let me see: the publication claims there were fifty attorneys on the staff.

Hassard: Yes, I see my picture.

Chall: I noticed that only one among the eighteen in the pictures was a woman, Gwendolyn Yee. Are those eighteen people partners? How do they happen to be in those photographs?

Hassard: I'll have to look at the photographs. [looking through pamphlet] The first two are the partners at the time. Gwen Yee was a partner until she left. Her husband is a lawyer, and she left to go into practice with him, over in Oakland, as I remember. We had another woman partner who left after childbirth. We have a couple of women partners now. I'm just trying to think back. Up until say the late 1980s, we only had Gwen Yee and the one other woman.

Chall: Is there any reason for so few women?

Hassard: She married another partner [laughs], and that wasn't such a good idea, as it turned out. Didn't bother me any, but it did cause frictions.

Chall: I don't know how many there are today; you probably don't either.

Hassard: No, I don't. Well, this picture was taken after the other woman partner left. And since then, there came on a couple of women, Kathleen Strickland for one, and Denise Rogan. Actually, we have never had any policy or particular attitude regarding women. In former years, there just weren't very many of them around. [laughs]

Chall: That's true. Now they're approximately half the law school student body.

Hassard: Yes. Well, now, there are a lot. You may notice around here, we don't have any color bias.

Chall: That's right.

Hassard: Going over my mind, I can't think of any bias we've ever had as a firm towards sex, religion, national origin or anything. It's just who seemed to be good people to do it.

Chall: What is the criteria?

Hassard: Competency.

Chall: And how do you judge that?

Hassard: It's hard to judge. We make mistakes all the time.

Chall: When a new attorney comes into your--let's say just from school, or from another firm--

Hassard: Well, in the last ten years or so, we've made it a practice of hiring three or four summer associates from the law schools around the Bay. If one of the summer associates looks good, we try to keep him or her, and I'd say looking at the partners that are in the picture there, several of them emerged from the summer associate thing, and it had nothing to do with their sex or anything else.

And then we've also, sort of by happenstance, we've hired quite a few of our lawyers, some of whom are now partners, from either the district attorney's office or the city attorney's office. That started, we hired one young man from the DA's office who was excellent, and he recommended others [laughs]. That sort of happened that way.

Chall: Do they have a probationary period when they come in?

Hassard: Well, associates, we have a period of several years before--it used to be four, I don't know what it is now--before they're considered for partnership. So that's sort of a probationary period. Usually, if a lawyer who's an associate is not invited to become a partner, he or she leaves, finds another position.

Chall: I see. It's like tenure in the faculty.

Hassard: Very much the same. And it happens in all law offices.

Chall: And who makes the decision? How do you make a decision about whether somebody's going to be a partner? What's the management setup?

Hassard: All the partners vote on it.

Chall: Do you think the eighteen attorneys in the picture were partners at the time?

Hassard: Yes.

Public Relations/Advertising

Chall: I see. This piece--I guess it's a PR publication--goes into the various kinds of cases that you take up. And then, it says, "We offer the flexibility of a mid-size firm..." et cetera. "Billing statements come to you with meaningful detail which can be tailored for reporting specific needs."

Hassard: [laughing] That's the kind--that's puffery.

Chall: "We welcome comparison of our fees with those of others providing comparable services." In other words, this was subtle advertising?

Hassard: I think if you look at fifty law firms' brochures, you'd find those words in forty-nine of them.

Chall: It's a way not of direct advertising, but of working for new clientele?

Hassard: Yes.

Chall: Now, where do these things go?

Hassard: They went around to the various places that various partners knew about. I can't answer that question.

Chall: Is this something that your firm put out from time to time, do you know?

Hassard: No. See, I actually retired from membership in the firm in 1986, and I have been semi-retired since then. And since 1986, I have deliberately refrained from poking my nose into the business of the firm. I think it's very bad for somebody that's retired or even semi-retired to still try to run the thing, so this was put out about 1986 or maybe '87 or '88.

Trying Cases Before a Jury: Some Like It, Some Don't

Chall: All right. There's a word in this publication that I find interesting. This deals with your litigation services. "The major factor setting our litigation section apart from those in other firms is the number of cases we actually try to verdict."

Hassard: That's saying we don't settle them as much as some of the other firms do.

Chall: You try to go to a jury, is that it?

Hassard: Yes.

Chall: Why is that? What would be the reason for not trying to settle, and taking something to court?

Hassard: Well, that is a not-too-subtle way, and I'm not sure I would have stated it that way, not-too-subtle way of saying, "We're not afraid to go before a jury." There are some law firms that will settle almost anything because they don't particularly relish the idea of appearing before a jury.

Jury trials are a very different phase of a practice of law than other facets of it.

Chall: You're not a jury trial man, are you?

Hassard: I tried some jury cases when I was young, but as I got busier in other things, it became impossible. I think the last jury trial I tried that I can remember was down in Los Angeles sometime in the 1950s. And that was a nightmare, because I had to try and work in the middle of the night to do things that were being demanded by other clients, and then I had to be prepared first thing in the morning. It almost killed me, so I decided never again.

Now, there are some people, one of my partners of many years who is now retired, Sam Bossio. He was an excellent lawyer, and he would have been a tremendously successful business lawyer. He has very good judgment. People like him; he's smart as a whip. But he preferred to go try cases before a jury. So he concentrated on jury trials. People just differ.

Chall: Personality.

Hassard: Faced with the same problem I was faced with, he chose to drop the rest of the practice.

Chall: I'm sure there must be some excitement in going before a jury and trying a case. It would depend I think on your personality, wouldn't it?

Hassard: I guess it does. Well, at least in this firm, the most successful trial lawyers we've had over the years have been men and women that do a thorough job of preparing. Al Bonnington, who died about twenty years ago, was a top-notch trial lawyer. But he would lock himself in a room for days before a case would go to trial, and he'd learn every facet of it. So when he went into a courtroom, he was prepared for anything. And that's drudgery.

Chall: Yes. But it's the only way, I guess, to do it.

Hassard: Yes. It's not dramatic. Lots of young kids think, Clarence Darrow, they're going to get in and orate and be spellbinders. That's not the way you do it.

Assigning Attorneys to Clients

Chall: Just have to prepare your case. When you were in charge at the firm, what criteria did you use for assigning attorneys to clients? What's the mix there? Did you think of that rather carefully before you did it?

Hassard: Tried to, but that's a very, very difficult question to respond to with any degree of accuracy. It's a combination of things. You have to evaluate an individual's ability, an individual's likes and dislikes. For example, Bossio, I tried to get him to do a lot of work for Blue Shield of California. He didn't like it. He preferred to go before juries. So you have to take into account not only an individual's abilities, but also their personal quirks. And you try to get square pegs into square holes and round pegs into round holes. You don't always succeed. But at least I never found that there was any formula that I could use.

Chall: Just intuition?

Hassard: Intuition, and judgment and experience. And the bigger the firm, the harder that job is.

Chall: Yes, it would be. You can't disappoint a major client.

Hassard: [laughs] You can, but it isn't a good idea!

Chall: You don't want to, that's right. Would you change attorneys in mid-stream if the mix wasn't right?

Hassard: Over the years we've had to on a few occasions, yes. Sometimes you get to the point where you just have to.

Chall: Where the attorney himself, or herself, might be dissatisfied?

Hassard: We had one lawyer that comes to my mind; he's long gone now. He graduated number one in his class from one of our better law schools--I'd rather not identify it--and when he first started here as a young associate right out of law school, you could see why he was number one. He was bright. And after a while, he sort of just didn't get things done. And I remember I'd come in sometimes in the morning and pass his office and see him sitting with his feet on the desk, reading the morning paper, when he had jobs to do.

Well, we finally had to tell him we were sorry, but he had to find something else to do. Well, he got a job down in southern California working full time as an in-house lawyer for a big real estate developer, and he thanked us. He's been doing great ever since. He came back and visited us once some months after he had left, or a year or so, and he told me, he said, "Hap, I'm sorry, but I was overwhelmed having so many different clients. I didn't like it. Now I have one boss, one client, and I can just concentrate on that, and I'm much happier."

Chall: Good.

Hassard: Now, how do you know a thing like that? That's a rather extreme example of how I was trying to answer your question.

Chall: Obviously he didn't belong in the firm.

Hassard: Yes, but neither he knew it nor we knew it until he'd been here a while.

The Value of a Mentor

Chall: When you started, the firm was very small, and my impression has always been that Hartley Peart was definitely a sort of mentor to you. He guided you. He certainly had a lot of faith in you.

Hassard: Yes, he did. He pushed me right in the foreground when I was really not dry behind the ears yet.

Chall: Well, obviously you came through. Have you ever felt that way to any member or members of your staff over the years, when you were in charge here, that you wanted to act as counselor or advisor or mentor to all of them, or some of them?

Hassard: Some, not all.

Chall: And you did?

Hassard: Yes.

Chall: Have they moved along as you would have wished?

Hassard: Some have, and some haven't. You know, one of the things in judging people and their abilities, and how they're going to perform under certain conditions, is an extremely difficult task. It's an art, not a science, and even as an art, it's very imperfect. Just as a rough rule of thumb, I have felt that if I'm right 50 percent of the time, I'm doing an excellent job. It's so difficult.

Now, you mentioned Hartley Peart. He did, he had tremendous faith and confidence in me when I was pretty young, and I don't know that I have ever given myself as much leeway as he gave me when I was still in my twenties.

Chall: The opportunities were there, and he needed somebody to take them over, so he gave them to you. But you didn't fail him, obviously.

Hassard: I hope not.

Chall: [laughs] I doubt it. So I just wondered if people are in trouble or concerned over the years, would they come in and talk to you, or would you bring them in and talk to them if you felt there was some problem?

Hassard: Yes. There were various kinds of problems, too.

Chall: Yes, personal as well as legal?

Hassard: Oh, all kinds. [laughs] We had--oh, I hate to--I don't think I want this in the book. We had one very bright young lawyer many years ago who suddenly went sour. And he botched up some things terribly, embarrassed the heck out of me. When I delegated to him tasks that I thought were well within his ability and would be no problem, he screwed them up.

Well, later we found out the problem: he had two wives. And he was trying to take care of both of them and keep them from knowing about the other one! [laughing] He literally was going insane.

Chall: That would be difficult for anybody, but particularly an attorney who knows the law!

Hassard: Well, how in the hell he did it just baffles--all the rest of us were totally with our mouths open. How in the hell could he do it? He had one gal here and another one there, and apparently he'd zip back and forth. And the net result was, he was going worse and worse in his practice, and we didn't know what the heck had happened to him. Over a period of fifty-five years, a lot of different problems arise.

Chall: Well, have you enjoyed it all?

Hassard: [laughing] Not all of it.

Chall: Enough to want to come to the office every day?

Hassard: Yes. But I didn't enjoy that two-wife episode. It really--he goofed up a will for one of my best clients who then died, and so I couldn't correct it.

Chall: My. That is serious.

Hassard: Yes, it was. It was not fun. And I had a heck of a time then, because by that time, he was off his rocker. I had a heck of a time explaining that he was a top student and he was a brilliant young lawyer, and he was rapidly going places fast--then all of a sudden--

Chall: Just not there any more for you.

Hassard: And I was unable to supervise him hourly and daily, because I had my hands full of dozens of other things.

Chall: Yes. That was a sad case. In this publication, there were two cases mentioned. I don't know whether they were mentioned just because they were exciting, or whether they were ground-breaking. One case is called ground-breaking. One of them is the Royal Globe case, and the other is Davis v. Alioto. Are those cases that we should discuss here, since they're mentioned in the publication?

Hassard: Well, Royal Globe was an insurance case, that involved a rather massive change in the attitude of the California Supreme Court towards insurance liability. It was decided during the Rose Bird years, and you can guess it was on the liberal side.

Davis v. Alioto: Front-Page Malpractice Suit

Hassard: Davis v. Alioto legally is not particularly startling. To the best of my recollection, over all of the years I've been around here, this is the only genuine front-page case we've ever had. The defendant, Alioto, happened to be mayor of San Francisco.

Chall: Oh, Joseph L.

Hassard: Well, and also his son, Joseph M. Both were defendants. We represented a cattleman from Wyoming named Davis. It was a long, long story, but he and other cattlemen discovered that they were having prices fixed on them for the sale of their cattle to the various chain stores--Safeway, Atlantic and Pacific Tea Company, Lucky's and all--they'd all gotten together and conspired to fix prices.

Davis and a group of other Wyoming cattle ranchers decided to file a suit, and they went to a lawyer down in San Jose first. That lawyer decided that he was over his head, so he brought Aliotos into it. The Aliotos ultimately settled with these various chain stores for something like--I think it was $10 million, may have been $15 million, I forget what it was, but some amount. And in divvying up the pie, they left Davis out in the cold.

Their fees were about 60 percent of the $15 million, so Davis got mad as hell. He happened to be a lawyer; he had practiced in Chicago, and he'd retired and bought a cattle ranch in Wyoming. One of his good friends and his personal attorney was a lawyer in Cheyenne who was a friend of mine, and so my friend in Cheyenne called me one day and wanted to know if we wanted to handle a case against the Aliotos.

In any event, I didn't handle it myself. I turned it over to Jim Penrod, who was one of our top trial lawyers. His picture's here, by the way. The Aliotos were arrogant. They wouldn't give us the time of the day. So we ultimately went to trial, and--

Chall: And you won.

Hassard: We got a verdict of some several million dollars against them, and then they wouldn't pay, and we finally had to foreclose on their homes. When we started to do that, about the time we had the sheriff to come out and have an auction, they suddenly found the money and paid up.

Chall: Oh, that was exciting.

Hassard: It's first page stuff, but it's not anything of great significance.

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Hassard: From what Penrod told me, the Aliotos were terrible witnesses. They talked down to the jury. He said they helped him out in no end.

Chall: The significance, I think, of the other one, the Royal Globe case, was that one of the staff members had written an article that was cited in that case.

Hassard: Yes, Glenn Allen. He was the staff member who wrote the article. It was used in the case that overturned the Royal Globe. Royal Globe was overturned as soon as the court--as soon as the public kicked out Rose Bird and the two other justices.

Chall: Do your staff members write articles from time to time that have significance? I know you did something with the malpractice, but it is interesting that a staff member would have written an article that could be used in a case.

Hassard: It was published in the University of Pacific law journal. Yes, once in a while. I have been personally disappointed in the last decade that our partners haven't been more active in writing articles for law reviews and legal publications, because it's a way to get yourself known and evaluated by your colleagues in the practice. But they're all so damn busy.

Chall: Yes, that's right, it takes a long time to write an article. Well, this is the end of the half-hour. So we can go on with page two on the outline when I come back.

Hassard: Okay.

The American Bar and State Bar Associations

[Interview 8: February 16, 1993] ##

Chall: I wanted to know whether you had had any close association with the Bar Association. You've been a member, I'm sure; all attorneys have to be members of the Bar Association.

Hassard: Yes. I've been a member of the American Bar Association for a number of years. Back in the late sixties and early seventies, I served on a committee for several years, the Liaison Committee with the American Medical Association. That's the only committee of the American Bar Association that I can recall serving on.

With the State Bar, I over the years have served on several different committees: the Insurance Committee, the Adoptions Committee are two that I recall. And two or three others at various times.

Chall: What was the Insurance Committee, what was its thrust, focus?

Hassard: Its primary focus was on obtaining available health insurance for the members of the State Bar and their families, and it was somewhat difficult, because historically, the worst risks for health insurers are physicians and lawyers.

Chall: Oh, really? I can understand physicians; I understand they don't take good care of themselves. But what about attorneys?

Hassard: That's correct; also they use--well, attorneys are inclined to over-utilize. If it's for free, then they want to do it. [laughter] And also, they are more accustomed to the intricacies of insurance contracts, and they know how to utilize them. So the Bar Association are not the favorite customers of health insurers.

We also focused on group life insurance, and there we achieved a considerable success. We were able to enter into a contract with California Western States Life Insurance Company for a term life with very good rates.

Chall: As far as you know, has all of that changed much?

Hassard: Well, the term life is still in effect, as far as I know, but California Western States was sold to a Texas Life company, which in turn sold it to an Indiana Life company, so I've lost track. And I'm out of the program now, because I've passed the maximum age limit. It was converted into a life payable at death.

The health insurance program has shifted from time to time. I don't know exactly what it is now, for again, the reason I'm over age.

The local Bar Association--I've never been very active.

Chall: Do you think that it's essential for attorneys to belong to the Bar Associations, that they provide some useful activity or some useful means of understanding what they're doing for the attorneys?

Hassard: That's a difficult question to answer. I can't say that I am particularly pleased with the setup of the State Bar, in which the licensing function and the representation of the profession function are consolidated into one organization. The two frequently are at odds. I think that lawyers need to have some means of getting together and discussing common problems, and promoting the interests of the Bar. But I think it's better to be on a voluntary basis than a compulsory one, which is the way the State Bar is set up.

I, of course, compare the State Bar with the state medical association, which is voluntary. And as the article that you sent me some time ago spells out in great detail, the California Medical Association is a very powerful voice in the state capitol, and the State Bar is not.

Chall: So you think that has something to do with its being compulsory?

Hassard: Well, since it's a state agency, it is very limited in what it can do, consistent with the constitution of the state and the statutes of the state. The California Medical Association is not a state agency.

Chall: It's allowed to do whatever it wants--its members want.

Hassard: It's like the teacher's association.

Chall: That's a very interesting thought. Now, what about the Adoption Committee? What was that set up to accomplish?

Hassard: It was many years ago. There was a period of time when adoptions by private parties, so-called private placement adoptions, were being severely criticized in the press, for alleged wrongdoings. Both the State Bar and the state medical association established adoption committees to investigate the allegation and to see whether or not legislation was desirable. I was on the State Bar committee.

We did a rather thorough job, and recommendations were made, and they were ultimately adopted by the state legislature. But it's so many years ago, I don't remember the details. I'd have to refresh my memory.

Chall: That's all right. It's all in the public record.

Hassard: Yes, it is.

Chall: Did you find that an interesting committee, in terms of the subject?

Hassard: Yes. And it was a committee that had a function. I mean, so many committees of organizations are really unnecessary, don't have much of a function. This one really had a function.

Chall: Came out with the legislation and that was it.

Hassard: Yes, it did. Well, it wasn't quite it; it had to get through.

Chall: Oh, yes. That was some time in the fifties?

Hassard: It was a long time ago.

Chall: Yes, I rather recall a bit of that debate. I think it's still a concern, adoption.

Hassard: Yes, but it hasn't become a public issue, that I can recall now, in a long, long time.

Chall: No. That's probably because there's a law.

Hassard: Yes.

Selecting the "Best" Attorneys

Chall: Now, in this publication that Hassard, Bonnington, Rogers & Huber put out, which we talked about a few weeks ago, there's a line in the litigation section here that says it "is made up of seasoned trial attorneys, including two listed in the recent publication, 'The Best Attorneys in the United States.'"

Hassard: Yes. [laughs]

Chall: Now, tell me what you think of a publication which would be able to nominate the best attorneys in the United States?

Hassard: [laughing] Oh, I think it's a fraud, frankly. Actually, the two attorneys that are listed are very fine attorneys.

Chall: I don't think they were listed here.

Hassard: They probably weren't. I think I can guess who they are. It doesn't matter. But it's obviously promotion stuff. It's done for the welfare of the publishers, of course. And to try and pick "the best attorneys" in any community is extremely difficult, because one attorney may be best at trial work, but very mediocre or poor at preparing wills or something like that. The time-honored national publication, which is sort of the lawyers' bible, is the Martindale Hubbell.

Now, it lists every licensed lawyer in the United States, and it judges them on the basis of what their colleagues have to say about them. When I was younger, every year, a representative from Martindale Hubbell would call and make an appointment and come to see me, and then would ask my opinion of a whole long list of lawyers that he would give, many of whom I wouldn't know at all, others I would know. He'd go around San Francisco, and they'd do it in every community in the United States. Basically, the ratings were A, B, C, or none at all. None at all just meant that: it didn't necessarily mean--

Chall: They were poor; just meant that nobody knew anything about them.

Hassard: Either that or what was known about them was not--

Chall: Publishable.

Hassard: Not publishable, that's right. But an A rating was the top that they could give. B rating was second. Very often, the B rating was given to young lawyers who hadn't been in practice for ten years, which you had to be to get an A rating. And then the C rating was definitely mediocre.

Then there was a V rating; you either got a V rating or you didn't. The V rating was for your reliability on paying your bills and meeting your financial obligations.

Chall: Oh, I see. So you had both A and V--

Hassard: AV, BV and CV. You couldn't get an A, B, or C without a V. So the nonrated ones--some of them were nonrated because of an inability to get a V.

But in any event, at least with Martindale Hubbell, you knew how they went about it, and you could get an idea of what they were after. It listed every lawyer in the United States, so you knew that every lawyer had at least been checked one way or another.

Chall: I see. How often did this come out?

Hassard: It's in the library; comes out once every year.

Chall: Every year?

Hassard: It is about ten volumes I think.

Chall: Goodness, what a job.

Hassard: And lists almost a million people.

Chall: What a chore!

Hassard: Yes, it is a chore. But it's invaluable for a law firm such as ours, or any law firm. If you need a lawyer to help you on something in a distant city, you can look in Martindale Hubbell and get an idea who you might want to select.

Chall: So this is probably for the benefit more of law firms than it would be for the private citizen?

Hassard: No, it's for both, but primarily it's for the benefit of lawyers. I think primarily, they use it much more than non-lawyers. But this "Best Lawyers in the United States--"

Chall: That's a different matter.

Hassard: That's a different matter.

Chall: Have you ever been--I presume you have been--approached by Who's Who to put your name into that publication?

Hassard: Oh, I've been in *Who's Who in America* for years. [laughs] That is--you know, I don't think I've ever had anyone approach me in person or by telephone or by letter because of my being listed in Who's Who. But I get all kinds of sales literature. [laughs] When you're in Who's Who, you're on everybody's sucker list.

Chall: I didn't realize that.

Hassard: That's about the only thing, the only advantage I could ever find. No, I've been in *Who's Who in America* for I guess twenty-five, thirty years. I once bought the volumes; they're sitting over there, red book. I did that once, but never again.

Chall: They're invaluable for historians. They're a help to finding out how to spell people's names that are long gone, or that you can't remember. Well, I think that takes care of lists of great persons.

Informing and Socializing

Chall: Now, your colleagues have mentioned that in former days--I don't whether that's still true--that attorneys would meet and socialize after work--

Hassard: Yes.

Chall: --in nearby bars.

Hassard: Yes. First of all, I don't know whether it's still true or not, because I don't any more. [laughs]

Chall: You've given it all up. But in the days when you were active, what was the meaning of these socializing periods, and where were the bars?

Hassard: Well, the bars were just their location. [pause] Basically, over a period of years, two of my then-partners, Al Bonnington and George Smith, and I, would meet after work with various other lawyers, most frequently lawyers that were engaged in the same type of defense work that we were, medical and insurance. Bob Lamb, who represented Lloyds of London in this area, and who was a former Rhodes scholar, was a frequent person.

And very often, we would discuss current trials that were underway or were about to begin, what strategy would be used. And then there were several judges that would join us, who were formerly in practice before they became judges. It was a combination of relaxation, and usually started around 5:30 or so, 6:00. It was a means of exchange of professional information.

Chall: Now, when you say the judges, they were not involved in the cases that you were coming up with, or were they--?

Hassard: [laughing] I can't give you a flat answer to that. Mostly no, but once in a while, yes.

Chall: And then you could discuss--

Hassard: No, we wouldn't. If a judge before whom one of us was trying a case was with us, we would just not talk about that case.

Chall: I see. At that time, it was just a social--

Hassard: Yes. It was a means of exchanging information on matters of common interest.

Chall: What were some of your bars? I think one of them was mentioned, I've forgotten it already, but it was in an alley close by one of your offices.

Hassard: Oh, it was behind 111 Sutter, it was the Lick Alley. Way back in the Gold Rush days, there was a hotel there, and the hotel was the Lick Hotel. It faced on Lick Alley. Lick Alley ran between Post and Sutter, between Montgomery and Kearney. Some time in the thirties, a garage was built on the site of the former Lick House, and there was an old, old restaurant-bar that had been there, I guess, way back, and that was just around the corner from our office, so we met there quite frequently.

Chall: Where else might you have met?

Hassard: Oh, there was one across the street on Sutter called the Brokers Club, we sometimes would go there.

Chall: Would you have something to eat alongside the drinks, pretzels, or whatnot?

Hassard: I don't remember.

Chall: How long would you stay, maybe an hour or two?

Hassard: An hour or so, yes.

Chall: That would be nice and relaxing. How long did this go on?

Hassard: Oh, over the years, on and off thirty years or more.

Chall: You don't know whether that still goes on among the attorneys?

Hassard: I just really don't know now. I imagine it does.

Update on Swinerton and Walberg

Chall: Now, I wanted to get an update on Swinerton and Walberg. I noticed that in some information that you gave me, you retired from their board on February 28, 1989.

Hassard: Yes, as an officer and a director.

Chall: After fifty years of being an officer and a director. Did you just feel that fifty years was enough? What prompted you to resign?

Hassard: It was a combination of things. Partially, fifty years was enough, and partially because it was time to let somebody younger go on the board, and take over the secretary's duties. Actually, one of my younger partners, Sam Bossio, replaced me on the board, and replaced me as secretary.

Chall: You had started off when there were just three of you as general partners. Is that--?

Hassard: In Swinerton and Walberg? Oh, no, no, no. Swinerton and Walberg Co. was over a hundred years old. It was under the name Lindgren and Swinerton, it was the largest building contractor in the Bay Area as far back as--it was before World War I.

Chall: I noticed in your interview with Mimi that you had had some very interesting experiences--very exciting activities during World War II, and just before.[1] What happened with the industry after World War II?

---

[1] Fifty Years in Law and Medicine, pp. 120-132.

HASSARD, BONNINGTON, ROGERS & HUBER
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
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ONE
-6444
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-6401

HARTLEY F. PEART
(1880-1954)
GUS L. BARATY
(1884-1966)
ALAN L. BONNINGTON
(1922-1972)

February 14, 1989

Mr. Milo S. Gates
Chairman of the Board
Swinerton & Walberg Co.
580 California Street
  Suite 1200
San Francisco, California 94104

Dear Ned:

On Tuesday, the fourteenth day of February, in the Year of Our Lord 1939, I was elected a director of Lindgren & Swinerton Inc. In 1960, the corporate name of Lindgren & Swinerton Inc. was changed to Swinerton & Walberg Co. As of today I have been a director of Swinerton & Walberg Co. for exactly one-half century.

Fifty years appears to be an adequate period of time to serve; and accordingly, I herewith submit my resignation from the Board, to take effect at the next regular meeting on Monday, March 6, 1989. I know that my successor, Sam Bossio, will prove to be a great resource to the Company and to the Board.

Incidentally, it may be of interest that the other members of the Board of Directors of Lindgren & Swinerton Inc. elected February 14, 1939 were: Alfred B. Swinerton, Richard Walberg, Alex S. Allen, and Hartley F. Peart.

Jane Hotaling Swinerton was then owner of Engineers, Limited, a companion company that was later merged into Swinerton and Walberg Co. Jane served on the Boards of Lindgren & Swinerton, Inc. and Engineers, Limited for many years. Her calm judgment and wise advice are amongst my cherished memories.

It was a long time ago and much water has passed under the bridge, but I have enjoyed it all.

Sincerely yours,

Howard Hassard

HH:bp
cc: David H. Grubb

FORM 262

SWINERTON & WALBERG CO.
BUILDING CONSTRUCTION
INDUSTRIAL CONSTRUCTION

INTRA-COMPANY COMMUNICATION

RE CONTRACT

DATE February 28, 1989

SUBJECT: **HOWARD HASSARD - RESIGNATION FROM S&W CO. BOARD OF DIRECTORS**

TO: Board of Directors

FROM: Milo S. Gates

Attached is a copy of a letter dated February 14, 1989, from Hap tendering his resignation from the Board of Directors of Swinerton & Walberg Co., effective March 6, 1989.

Hap has served on our Board for more than 50 years, beginning on February 14, 1939. His contribution to the success of this organization has been truly remarkable His loyalty and friendship to the management and the employees of Swinerton & Walberg Co. have been of great importance to the success of our Company.

We have enjoyed and valued Hap's counsel as our attorney and as a director of our Company. We wish him all good fortune, and we look forward to his continued interest in the future of our Company.

MSG

Attachment

MSG.jd

cc: Mr. W. A. Swinerton
Mr. R. Walberg
Mr. B. L. Raffin
Mr. P. A. Elsner
Mr. A. L. Schindler
H. Hassard, Esq.
S. Bossio, Esq.

1888 - 1988
SWINERTON & WALBERG
100 YEARS

May 11, 1989

To: All Swinerton & Walberg Co. Shareholders

From: Milo S. Gates

Re: **ANNUAL SHAREHOLDERS MEETING, JUNE 1, 1989**
BOARD OF DIRECTORS

We announce with regret the resignation of Mr. Howard Hassard as Corporate Secretary and as a member of the Board of Directors of Swinerton & Walberg Co. Hap Hassard has faithfully served on our Board for fifty years, since 1939, and while he has formally resigned, we look forward to his valuable counsel in the future.

Mr. Hassard's firm, Hassard, Bonnington, Rogers & Huber, has been our General Counsel for many years, and the firm will continue to perform that function.

Following Mr. Hassard's resignation, the Board of Directors elected Mr. Sam Bossio of the same law firm to fill Mr. Hassard's unexpired term. Mr. Bossio was also elected Corporate Secretary of Swinerton & Walberg Co.

At the Annual Shareholders Meeting on June 1, 1989, the Shareholders will elect a Board of Directors for the ensuing year. The following names will be placed in nomination; all are presently members of the Board.

Salvatore Bossio
Milo S. Gates
Louis P. Gerhardy, Jr.
James R. Gillette
David H. Grubb
Donald W. Leyman
Gordon W. Marks
James B. Swinerton

MS Gates

MSG.jd

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CA Lic No. 92

Hassard: Well, it was called Monumental Construction. This building is called a monument. The construction business in the monumental field was good, with some declines but not much, continuously from World War II, the ending of World War II, because there was a built-up demand, all the way up until 1990, and then the bottom fell out in 1990. It really fell out.

When I say "we," I'm talking about Swinerton and Walberg and its related companies. We had one disastrous period during the 1950s, and it was not the problem of the economy, it was mistakes that were made by ourselves. One of our ambitious officers was determined to venture into Alaska, and we had half a dozen huge contracts up in Alaska in the early to mid-fifties. A couple in the Anchorage area that turned out all right.

But then we bid and obtained--I think actually there were several, maybe three, four, or five, contracts to build radar stations way up in the northern part of Alaska, facing Russia, facing Siberia. And after it was too late to do anything about it, we found that for about six months of the year, it was impossible to get either in or out, and a couple of winters we had all our men there and our equipment for six months, idle, on full cost. We lost millions on those radar stations.

Those are the only real disasters I remember from the end of World War II up until 1990. Then in 1990, we had some bad things happen.

Chall: Yes. Well, the building boom ended. Were you caught building monumental--

Hassard: We had a couple down in Los Angeles area, not up here, but down in Los Angeles area there were disasters. Cost overruns were horrible.

Chall: And then the problem with renting them or selling them--

Hassard: No, getting paid. The owners went broke.

Chall: Yes, that's right. So what's going on now? Is the company very small?

Hassard: Well, it's much smaller than it was, but it's still fairly good-sized. Last year, it had a reasonably decent year for the first time since 1989.

Chall: What does the board do--I noticed here that it's a small board. Do you make decisions on where you'll do your building? I know that you probably had something to do with checking contracts.

Hassard: Sure. No, the board of Swinerton and Walberg was basically an inside board. The closest thing to an outsider for fifty years was me, and now it's Sam Bossio. So the board does not try to micromanage. That's done by the officers. But the board considers broad-range things, financing, the general thrust of operations. It's difficult to condense fifty years of activity into a couple of sentences. It's a reasonably active board, but it is not a working board in the sense that it doesn't try to run the business day-by-day.

Understanding Contracts

Chall: Were you the primary person to check the contracts?

Hassard: I can't say that I was the primary. I did it from time to time, but I couldn't do it all the time. For many years, we had a couple of employees, mid-managers, who through experience were excellent reviewers of proposed contracts. And if they got into trouble, they'd refer--call me in, so to speak. But on routine contracts, there was no sense in my spending time when they could do the job as well or better.

Chall: It would be very difficult, at least to an outsider like me, just to think of what goes into a contract, major building--

Hassard: Oh, whether you're a lawyer or not, you have to do it for a while, and get accustomed to the variety of things that architects and owners try to put in. First of all, you have to make sure that you're not under time constraints that are impossible. And that means you're going in with a loser. You have to make suré that your freedom to subcontract and freedom to purchase materials and supplies is not inhibited to the point where again, you're not allowed to use your own judgment. Many owners try to do that. It's not in their own interest, but they don't know any better.

Then you have to make sure that everything that needs to be insured is insured, and that the insurance requirements of the contract are met. There's a whole long list of things that you have to know about. If you know about it, you can, as you read along, you can check things off mentally, and that's fine. But if you don't know--

Chall: That takes a person with a great deal of experience in that field.

Hassard: Yes.

[Interview 7: October 29, 1992] ##

Hassard: I have no expertise in the actual doing of the work. For example, I could not create a blueprint if I tried, I could not estimate a job. The toughest part of construction, before you start, is estimating. Obviously, I am not a bricklayer or a plasterer or a carpenter or any of the building trades.

Chall: But you still had to understand--

Hassard: But you have to understand, yes. My job required that I be able to look at a construction contract, and be able to ascertain whether it was relevant or not, whether it was fair or not, whether it was workable or not. Many of them are not drawn up properly, particularly contracts that are drawn up by lawyers for businesses or banks, particularly banks. They may be good draftsmen of contracts generally, but have no skill in the construction business, and the result is that they miss important things and they put in things that aren't important, and some things that are impossible.

Chall: Is there anything else you want to say about that company, because that's been an interesting part of your career.

Hassard: I think I put a lot of it in the oral history that I did previously.

Remembering Some Judges and Attorneys

Chall: The next question that I had was about lawyers and judges you particularly recall. I don't know whether we have covered some of that, or whether you'd like to make some statement about these people.

Roger Traynor

Hassard: Well, that's difficult to pick and choose. I suppose the judge that has influenced me more than any other judge was Roger Traynor, and that's because when I was in law school and on the staff of the Law Review, Roger was a young professor, and one of his tasks was to manage the Law Review. As a net result, I saw more of him as an individual than I did of the other professors, even though I knew each and every one of them. And then after he left, went on the bench, I had frequent occasion to see him. I would say that my admiration for his legal skills and his above all good judgment made not only an impression on me, but I think that stimulated me in many ways.

Chall: I see.

Hassard: If I were to pick anybody out, Roger would be the one I would pick out.

Chall: So that he had a long-lasting effect on your concern and interest in the law, and in him.

Hassard: Yes. I didn't always agree with every decision he made on the courts that he served on. I guess no one could say that. But I could never quarrel with his skill and his judgment.

Chall: Any special recollections of attorneys who also stimulated and interested you besides those you've worked with in your own firm?

Anthony Kennedy

Hassard: Again, if I were to pick out one, it would be Anthony Kennedy--not the present Supreme Court Justice--

##

Chall: What was it about Anthony Kennedy that has impressed you all these years?

Hassard: Well, he was born and raised and practiced all his life in Sacramento. When he was a student in college, undergraduate and law school, he worked as a page boy for the state senate, and he was an extremely intelligent person. He had perhaps a deeper knowledge and understanding of the workings of the state government than anybody I've ever known.

Now, when I first met him, I was a young assistant to Hartley Peart, who was the attorney for the California Medical Association, and Bud Kennedy--as he was called--Bud Kennedy was the attorney for the two state dental associations, Southern California and Northern California. They've merged since then, but for a long time, there were two. He was their legislative attorney.

Well, because of the common interest of medicine and dentistry in many pieces of legislation, the occasion for Kennedy and me to meet each other and talk to each other and get together was quite frequent. In addition to that, there was a lobbying organization called the Public Health League, which started in 1933. The head of it was a man named Benjamin Harrison Read. Ben Read was the lobbyist for the Public Health.

The members of the Public Health League consisted of the state medical association, the two state dental associations, the state opticians' board, sometimes the nurses--they were in and out--podiatrists, they were called chiropodists then [laughs], podiatrists now. And as a net result, I also met with Kennedy and shared problems with him at meetings of the Public Health League. The result is we were thrown together quite frequently, and with common interests.

Chall: He helped you when you were working on legislation?

Hassard: Yes, that's right.

Chall: Knew how to work it?

Hassard: Oh, whenever I needed help, [laughing] and the skills of operating in Sacramento, my first stop was Tony Kennedy's office.

Chall: Well, that gives us a couple of thoughts there.

Hassard: I remember one of the things he knew how to do, very few people ever caught on to it. If he wanted to hold up a bill, and delay its passage through the legislature so that he'd have time to organize a campaign against it, he would compose an innocuous amendment, and in that innocuous amendment he'd deliberately misspell a word, and put a comma at the wrong place [laughs], a semicolon where nothing belonged, and it would get through. People don't read that closely. Once in a while, it would get caught, but most often not.

So then when it would get into print, there would be this screwed-up thing, and then he'd point it out, and so they'd have to wait until the time they could resend the bill back to the state printer's office and have it reprinted. And he could buy himself two, three, or four weeks that way.

Chall: Is that so? [laughs] That's pretty clever.

Hassard: I don't think I've ever explained that before.

Chall: Oh, that's a great story.

Hassard: Obviously, I've done it. [laughing]

Chall: I'm sure. And what else can you think of that he mastered?

Hassard: Oh, I can think of a lot of things that are best left unsaid.

Chall: Oh, too bad. All right. Those are two good examples of a judge and a lawyer who have helped you through the years.

Further Update on the Medical Board

Chall: There's been much publicity lately about the Medical Board.

Hassard: Yes.

Chall: Is that the same board that we talked about a few weeks ago--

Hassard: Yes. There's only been one board going back to the 1870s. Its name has been changed several times--

Chall: Why did they change it?

Hassard: I don't know. It's politically desirable, I guess, is the only way you could put it. It doesn't serve any purpose.

Chall: Yes, because the last time we talked about it, and when you talked about it with Mimi, it was the Medical Quality Assurance--

Hassard: Assurance. Yes. And up until 1975, it was the Board of Medical Examiners. In 1975, as part of the tort reform legislation, one of the things that the California Medical Association did to make some of the liberal members of the legislature happier was agree to make changes in the licensing laws, to stiffen them up, supposedly. And they changed the name to the Board of Medical Quality Assurance.

It didn't work out, because bureaucracy is bureaucracy, and changing a name and changing requirements doesn't make a bureaucracy any better than it's inherently capable of being. So last year, it was changed back to Medical Board of California. But it's the same board; it's been the same board for 150 years.

You asked in your recent letter to what extent is the CMA, the California Medical Association, involved.

Chall: Yes.

Hassard: Well, things I read in the newspapers are sheer fantasy. The reporters don't know what they're talking about. Actually, the relationship between the California Medical Association and the licensing board, by whatever name it has at the time [laughs], has been a rather distant relationship, sometimes quite strained, ever since I first started in 1935.

First of all, governors don't appoint, except in rare instances, don't appoint to the board the persons that the medical association would recommend. They appoint their political friends. Very often, their political friends don't even participate in any of the medical activities. Far from dominating the board, in some years, some governors have been better and some worse than others in appointments.

I can remember years in which the members of the board were hostile to the California Medical Association. Not even neutral; [laughs] they were just plain hostile.

The only governor since--my memory goes back to Governor Merriam in the mid-thirties--the only governor that ever asked the California Medical Association for a recommendation on an appointment to the medical board was Governor Pat Brown. His son didn't, and none of the other governors did, that I can recall. In fact, Earl Warren and the CMA had such bitter fights that anybody the CMA recommended didn't have a chance of getting appointed by Earl Warren.

But Pat Brown actually did, and amazingly enough, he appointed a couple of doctors who were staunch Republicans. Well, he was quite a different governor.

Chall: As far as you know, Governor Wilson hasn't done anything different?

Hassard: No, not a thing different.

Chall: Who appointed Dixon Arnett?

Hassard: Governor Wilson.

Chall: As executive director. So he's a fairly new appointee then?

Hassard: Oh, yes, just in the last two or three months. And that's a good appointment. He's a good man.

Chall: Well, he's got a problem.

Hassard: Sure. The problem is inherent. The process that the law requires guarantees inefficiency.

Chall: Explain that.

Hassard: I can explain it very easily. The board has a full-time staff of investigators. The quality of those investigators is determined by civil service rules, not by any real evaluation of ability. So you have a group of--some of them are outstanding, some are fine. Others are dumb. And all the shades in between.

You have a staff of investigators. Well, the investigators investigate, and after they have completed an investigation, they make a report, either recommending termination or recommending further action. If it recommends further action, it then is sent to the attorney general's office, where it may sit anywhere from six months to six years. It just sits there.

When the deputy attorney general gets around to doing something about it, they finally issue a citation. Now, that may happen--I've seen it occur--a physician has done something real bad. It will be five years or more before there's an actual citation issued. That's just like a summons, subpoena. That just starts the thing. Then it may be another five years going through the courts.

Well, no wonder there's a backlog, and no wonder the people can criticize and say that incompetent or crooked doctors are allowed to practice. They are. They are because of the process I just described. The governor can't change that process, because it's required by law. The board can't change the process, because it's required by law. The attorney general can't change the process. The only way it can be changed is by the legislature. And the chances of that happening are zero.

Chall: I see. It's the problem in the attorney general's office, then, in not having enough staff to deal with it quickly? Criminal cases in the courts have to be dealt with rather quickly.

Hassard: They get priority, for that reason. The answer is the same all the way around. The attorney general's office is civil service. We're a growing state. Our population keeps booming, and they're always behind time. They're always behind time on every board. It's just the medical board is more crucial. I mean, if you have an architect who is not competent, the press isn't going to get all excited about that.

Chall: Unless the building falls down.

Hassard: Yes, or a bridge falls down. I mean, that has happened.

Chall: [laughter] Yes, it has.

Hassard: It's not limited to the medical board. It's just true throughout government. Anybody who thinks that government can do a job better than private industry has got a hole in their head.

Chall: How would the medical, the CMA, the medical people themselves, how fast would they get after an incompetent doctor? Could the medical association do something about the incompetents without having it going through the bureaucracy?

Hassard: Yes, they can, but that doesn't stop the incompetent from practicing medicine. It's been done, and it is done from time to time. So yes, the medical societies, the discipline is handled at the county society level to start with and then goes to the state on appeal. They can act in a matter of weeks. But then the physician who is, say, expelled, goes to court, and then it starts dragging on for years.

And also, I can think of specific cases in which the medical society has expelled a physician, the complaint against him or her before the state board has dragged on and on for years, and he or she keeps on practicing.

To blame the California Medical Association for the shortcomings of the medical board is just to miss the point completely.

Chall: So what do you think is going to be done about the medical board?

Hassard: I've said nothing. The reason nothing is it would take changing the law, and if you change the law enough to permit speedy action, it would increase costs. That in and of itself is a deterrent to the legislature. And it would run the risk of being upset by the courts, on the ground that a person is presumed innocent until proven guilty, and on the ground that one's entitled to this, that, and the other thing.

So the public can't have it both ways. We have our civil rights, all of us, which are invaluable. And to keep those civil rights, we have to put up with the processes that I have outlined that the board has to go through.

Chall: I don't know how they're going to solve it now.

Hassard: They're not going to.

Chall: They're not going to solve it? So it's just a headline in the newspapers for a while, is that--

Hassard: Yes, and then in ten years from now, there will be another series of headlines, and a hundred years from now. Unless we change our form of government.

Chall: They did fire a few--I don't know whom they fired.

Hassard: A few investigators.

Chall: Yes, investigators, but that as you say isn't going to change--

Hassard: Didn't change a thing.

VIII HOWARD HASSARD: THE PERSONAL SIDE

The Bohemian Club

Chall: I think it's time to deal with some personal aspects of your life. Since this is the month of the Bohemian Club, tell me about the Bohemian Club, how long you've been a member, and what it is that you enjoy with your membership.

Hassard: I became a member of the Bohemian Club in 1942, so this is my fiftieth year.

Chall: How do you become a member? Do you have to be asked or accepted?

Hassard: Well, the process is the same now as it was fifty years ago; the time involved is quite different. In the first place, you have to be asked. Then you have to make a formal application. You have to have two sponsors. Then you have to personally be interviewed by each member of the membership committee. Normally, there are around fifteen members of that committee. That means personal interview with each one of them. Then you appear before the membership committee, and are questioned. The entire membership has an opportunity to support or oppose you.

Chall: By majority vote?

Hassard: No, just on individual comments to the membership committee. However, negative comments are the equivalent of black balling you. You just don't get in if you get any negative comments.

In my instance in 1942, the process that occurred took about six to eight weeks. Nowadays, the length of time between application and admission or denial of membership is roughly twenty years. [laughter]

Chall: My word! Is that because the membership is only to be a certain size?

Hassard: It always been unlimited size, but the number of applicants on what's called the waiting list is so long that if you're much over forty, you might as well forget it.

Chall: Is that so? And if you're much under forty?

Hassard: What happens now, and I don't think it's necessarily good, but necessity requires it, fathers put their sons in as applicants the moment they reach twenty-one. [laughter] They do! Twenty-one, twenty-two, twenty-three. And then when they're in their forties, they have a chance of getting in. But if you're older than that-- Also a process is developed that certain people, if they are outstanding members of the community and they apply late in life, there is a special quick process, but that's very difficult to get into.

Chall: Well, Henry Kissinger wouldn't have had to wait twenty years, I'm sure.

Hassard: No, he didn't, and if you were president of the United States, you could go.

Chall: Can you have honorary members for a short time?

Hassard: We have a few. There are about ten or fifteen. The King of Sweden is an honorary member. Clark Kerr, former president of the University of California, is an honorary member. That's the type. There are not very many.

The Bohemian Club operates a City Club, which is just like any other club.

Chall: Do you enjoy that? I understand it's available--

Hassard: It's available. It's a good place, for example, if you're having a luncheon meeting of people, there are private rooms that you can get. It doesn't distinguish itself, as far as I'm concerned, from other clubs of the same type. It's a convenient place, but it's not unique. The unique part of the Bohemian Club is its second home at Bohemian Grove, which is in session now.

The Bohemian Grove is located in Sonoma County on the Russian River, in a little town called Monte Rio about ten miles from the mouth of the Russian River. It now contains several thousand acres; it originally was only a couple hundred, but they've acquired all around. The heart of the Bohemian Grove is a redwood grove, a valley.

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Hassard: It was beginning to be logged around 1890 by its then-owner, a man named Meeker. When some of the members of the Bohemian Club discovered it, after considerable negotiations and debate, they purchased the redwood grove from Mr. Meeker before he had logged more than just a few trees. Most of the grove is virgin, and it's a beautiful place.

Chall: Sounds beautiful.

Hassard: It is. The main event occurs in July, the last two weeks in July, what we call encampment. The grove is dotted with private camps, been built over the years, and members belong to a camp.

Chall: I see, a group of cabins in a group, is that it?

Hassard: No, they vary, the camps vary from--some camps are a collection of tents, and others are a mansion. The one in which Mr. Kissinger stays, for example, is a great big mansion.

Chall: Where are you? Are you in a cabin?

Hassard: We have a house, a redwood house, called Camp Ladera.

Chall: And do several people stay in the house together?

Hassard: Yes, that's what the camp means. And they vary from small--two, three, four people--up to forty or fifty. One camp called Lost Angels are members who live down in southern California, and there are about forty or so in that camp. It's developed as it is over a period of a hundred years.

Chall: What is your encampment? Is it made up of like-minded attorneys, or do you have a variety--

Hassard: Well, we have a variety, but our camp is relatively small. It has a maximum membership of ten, because we have five bedrooms.

Chall: Has that changed over the years? Have you lived in different camps?

Hassard: No. The present camp, Ladera, was built--the building--was built in the early 1920s. Before that, they had tents. It has been where it is since the turn of the century.

Chall: And your group, for example, in your house, has that changed over the years?

Hassard: Oh, up and down with deaths and other things.

Chall: How do people join it? How do they decide to come into your camp?

Hassard: By invitation. That's true of all of the camps. They have developed this system over a century.

Chall: It would be a place to form strong friendships over the years.

Hassard: Yes. Because it's a private grove and a private club, the press has always been insatiably curious and tried to find out about it, and it's been infiltrated over the years from time to time by members of the press. There has never yet been an accurate story written about it. [laughs] For example, we have an outdoor dining room. It seats about a thousand people. And of course, we have to have chefs and waiters and probably a staff of well over a hundred to operate the dining facilities. Well, over the years on several occasions, enterprising reporters have posed as waiters, gotten in there and waited on tables for a couple of weeks, and then written stories. And they don't get it. [laughs]

Reflecting on the Meaning of Membership

Chall: I know that people who have been in it as long as you have must find something of value in being a member.

Hassard: Yes.

Chall: Could you tell me what it is that keeps you in it?

Hassard: Not precisely.

Chall: Is it the camaraderie?

Hassard: Partially. It's a combination of things. That's what the infiltrators just don't grasp. It's a lot of different things. First of all, music. The greatest music you'll ever want to hear anywhere. A mixture of professionals--doctors, lawyers, and indian chiefs contribute to it. The Bohemian Club Orchestra is the equal of the symphony orchestras of most cities. Over the years, we've had members who are opera singers. Lauritz Melchior was in a camp for years right next door to where ours is.

Chall: My. Just to hear him warm up would be a pleasure!

Hassard: Well I did, for years. I'm just giving you one phase of it. So the question you ask is literally unanswerable. There are too many things. Each day at noon there's a lakeside talk. I have been at lakeside talks given by President Hoover, President Eisenhower, President Nixon, President Carter, President Reagan, and President Bush.

Chall: Gives you an opportunity to hear them talking to you in a way probably differently from what they do when they're on the air, on television, in front of the press.

Hassard: Yes. I guess one of the most memorable lakeside talks I can ever remember was given by an ex-German by the name of Wernher von Braun. In 1960, he gave a lakeside talk in which he told us we were going to put a man on the moon within ten years, and just how we were going to do it. And the man on the moon landed just nine years afterward, just the way he said.

Another time along about the same period, Lee Dubridge, who was then the president of Cal Tech [California Institute of Technology], became terribly excited and gave one of the most emotional lakeside talks, because pictures of Mars had just been taken. He brought with him negatives, had them posted all around. That was the first time man had ever seen Mars. I'm just giving you a sampling.

Chall: Yes, I see, the stimulating aspect.

Hassard: There's a difference; all kinds of different things. Really, you can make the grove what you want it to be. And you can't cover everything.

Chall: No, apparently there's a lot going on.

Hassard: Yes. Couple of thousand people scattered over a couple of square miles.

Chall: You've just been coming and going in the last few weeks. Did you ever used to stay the whole two weeks?

Hassard: I once stayed the whole two weeks. Mondays, Tuesdays, and Wednesdays are kind of lonesome. About mid-week it perks up. I usually go up on Thursday; I may or may not go up on Thursday tomorrow depending on various factors.

Chall: How do you get up there? Do you drive?

Hassard: I drive.

Chall: You're still driving.

Hassard: Yes.

Chall: It's also a place where there are no women.

Hassard: There are now. Not members, not members! But [laughs] we had a big fight with the State of California years ago, and we now hire women to be waiters or waitresses in the dining room, and to be car hops parking the cars.

Chall: I see! [laughs]

Hassard: And they seem to enjoy it so much; I don't know.

Chall: And it hasn't changed the attitude of the campers. I think at some time the campers thought it would be impossible to have women on the scene.

Hassard: Well, we did. I was one of the many that thought it would be. But I didn't think they'd like it. But those that are there seem to. They seem to be college kids, mostly.

One thing that's misunderstood about the Bohemian Club is its criteria for membership. It does discriminate on the basis of sex. It has no other discrimination. We have black members, we have Asiatic members. As long as one's male, it doesn't make any difference, anything else.

Chall: And has that changed gradually over the years?

Hassard: No, no. It's always been that way.

Chall: When you first went in were there people of other races and religions then?

Hassard: When it was first started by the artists' colony in San Francisco in the 1870s, that rule was established, that anybody that was skilled in some art or interested in art could be a member. And at the very first, it had a woman member. Her name was Gertrude Atherton.

Chall: Gertrude Atherton! She was a great name. Certainly worthy of membership. Otherwise, the membership is based on what? What are the members looking for, since you represent so many different kinds of skills--

Hassard: Oh, yes, all kinds of different skills.

Chall: Is one of them character?

Hassard: Yes. A skill in some form of artistic endeavor, including speaking and singing and acting and dancing and every other kind you can think of, and appreciation of art, willingness to participate--those are all the things that are looked at by the membership committee.

Chall: Your expertise for speaking--you don't play an instrument.

Hassard: No, I don't.

Chall: You don't paint?

Hassard: I don't paint, and I don't have musical ability.

Chall: You appreciate it.

Hassard: I appreciate it, yes.

Chall: And you're a skilled speaker.

Hassard: Yes.

Chall: Well, I think that's very interesting. Fifty years.

Hassard: You must have oral--I know you have oral histories of other members of the Bohemian Club.

Chall: I think there have been.

Hassard: Earl Warren was a member for many, many years until his death.

Chall: I'm trying to think an interview that I did where we talked about it briefly. Easton Rothwell.[1] He'd been the president of Mills College.

Hassard: Yes.

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[1] Easton Rothwell, From Mines to Minds, Regional Oral History Office, University of California, Berkeley, 1985, pp. 224-231.

Chall: Easton Rothwell told me that he liked to go to the City Club sometimes on Thursday nights when there were concerts or plays.

Hassard: Yes, in the City Club. During the year, every Thursday night, there is a performance of some kind. We have a theatre in the club building.

Chall: That was something that he enjoyed.

Hassard: And they have plays, and they have music.

Chall: And then there are times when you could take your wife.

Hassard: Yes, that's correct.

Chall: That's something that he enjoyed being able to do. Otherwise, he went there on Thursday nights.

Hassard: I used to all the time. As I've gotten older, I don't do it any more.

Chall: Do you belong to any other city clubs in the area?

Hassard: I belong to the Olympic Club, which I haven't used in years.

Chall: What about the Commonwealth--

Hassard: I used to belong to the Commonwealth Club, but I got bored with it. Maybe I shouldn't have, but I did.

Chall: Did you attend their--

Hassard: I used to attend the Friday lunches, yes.

Chall: What did it seem like to you, just repeating itself?

Hassard: Yes. This was long ago; I was active in the Commonwealth Club in the 1950s, sixties, and somewhere in the seventies I lost interest.

Chall: I see. Well, that takes care of some of your special outside interests. Outside of your work with the firm here, how do you handle recreation?

Hassard: [laughs]

Chall: If you think about it once in a while.

Avid Golfer

Hassard: It gets more limited. I used to be an avid golfer.

Chall: Oh, were you?

Hassard: But I had to give it up practically the last couple of years, because I have chronic arthritis in my ankles and feet.

I started playing golf when I was in high school. I quit while I was in law school, because I had no time to play golf. I didn't touch a golf club until about thirty years later, when my son was in his teens, and he became interested in golf, and that got me started. I became an avid golfer until a year or so ago when my arthritis got to me. But I spent a lot of my time on a golf course.

Chall: How often would you go out on the course?

Hassard: Oh, it varied. As much as possible.

Chall: Where did you play?

Hassard: Well, for many years I belonged to the Marin Country Club in Marin County. I belonged to the Olympic Club, and I belonged to a mountain club where we have our mountain cabin called Meadowmont. And then Harding Park is very close to where we live, and I used to go there once in a while. Harding's a good course.

Chall: Where is Harding?

Hassard: Well, it's a public course. It's right close to the ocean, southwestern part of San Francisco. The Olympic Club at Lakeside is on one side of Lake Merced and Harding Park is on the other side of Lake Merced.

Chall: Oh, I know where that is. If you like music, do you attend the symphony in San Francisco?

Stern Grove

Hassard: No. My wife does! [laughs] Once in a while, we go to Stern Grove on a Sunday afternoon, and that's a wonderful place that so many people don't know anything about.

Chall: I should think it would be very crowded.

Hassard: Well, when my wife and I go every year to hear the Preservation Hall Jazz Band, which I love, and it's always mobbed then. The symphony orchestra, we could go Sunday and did, and it was pretty crowded, but not as bad. But all the concerts are free--

Chall: Yes, they are.

Hassard: --and Stern Grove reminds me of the redwood grove to some extent. It's smaller and not as many redwood trees, but it has some, and it has other trees. It's a beautiful spot. We live about just one mile from it.

Chall: Oh, that makes it easier.

The Family Cabin in Snowshoe Springs

Chall: Tell me about your cabin or house in the country, Meadowmont. Where is it exactly?

Hassard: Well, you have to be familiar with the Ebbets Pass, which is state highway 4, that goes from Angels Camp to Markleeville. Markleeville is the county seat of Alpine County, and it's over on the other side of the Sierras. Our cabin is in an area--well, there's three different names, it's an area that's about a mile or so in diameter. Dorrington, Camp Connell, and French Meadow.

Now, if you know where Calaveras Big Tree State Park is, we're about three miles up the highway from Calaveras Big Tree State Park. There's a hotel at Dorrington that was built, oh, about mid-1850s, and it was an overnight stop for people--the immigrants that were coming over the pass from the East or going the other way.

French Meadow is an area, a meadow, across the highway from the Dorrington Hotel, where the horses were pastured while their owners sojourned at the hotel. And from sometime in the mid-1850s until late in the 19th century, from the Dorrington Hotel to Markleeville was a toll road called Blood's Road, Blood's Crossing, actually. And when you stayed all night at the Dorrington Hotel, then you paid your toll, and proceeded, mostly on horseback or whatnot.

Chall: Was Blood's Crossing the name of Blood who owned--or was Blood meaning something else--like an area where there were battles or accidents?

Hassard: [laughing] No, there was a man named Blood somewhere in there. He owned the toll road, I think. The Ebbet's Pass is also famous for the carrying of the mail by a man named Snowshoe Thompson. For years in the 1850s, Snowshoe Thompson brought the mail from east of the Sierras to the West Coast during the winter on skis that were called snowshoes then.

Chall: So you built a house--

Hassard: Well, it's a cabin. It's not very large. We intentionally kept it small. In an area called Snowshoe Springs, which is the subdivision to the south of Big Trees Village. We built it about thirty-two years ago. My wife and I both love to go up there frequently, especially during the summer.

Chall: It takes several hours to get up there, doesn't it?

Hassard: About three and a half.

Chall: Yes, so that when you go, you intend to stay a while.

Hassard: That's correct.

Chall: One of your colleagues told me that you drove around up there in an old Jeep for many years.

Hassard: Oh, for many years, until it died of old age.

Chall: Did you leave it up there?

Hassard: No, it disintegrated. It got to the point where I'd drive it for about two miles and something would break. I'd get that fixed, and then drive it two miles and something else would break. It just wore out. But it was a World War II--it was used during World War II, and I acquired it from a neighbor who was selling his property and leaving about 1960, and had it for I guess about twenty-five years.

Chall: And did you just sort of pasture it up there and drive around in it?

Hassard: Yes. You couldn't drive it very far. It's top speed was about thirty miles an hour.

Chall: It wouldn't take the hills and mountains--

Hassard: Oh, it would sure--it was a four-wheel-drive, and if you put it in compound low, it could go up the side of a wall. About two miles an hour, though.

Chall: But make it.

Hassard: The engine, by the way, wasn't what wore out. What wore out was the body. The engine was just as good as new, and I don't know how many hundred thousand miles on it, but that speedometer was broken before I got it.

Chall: Sounds as if that was a good way to get some recreation.

Hassard: Oh, yes, we could go all over everywhere. In those days, I'd try--I did some fishing, which I gave up when it got to the point where there was a fisherman every ten feet, no matter where you went in the high Sierras. It became useless.

Chall: You were a golfer. Did you also do much walking around--hiking?

Hassard: Oh, yes, we used to hike around. Our cabin is about one mile from the Stanislaus River, and on a road called Board's Crossing you can go down and cross the river and go over into the south grove of Big Trees, which hardly anybody ever gets to, because you have to hike in for several miles. Used to do that.

Chall: Sounds as if you have some good memories. Do you still get up there?

Hassard: Yes.

The Children

Chall: Still drive up there and enjoy the cabin. And do you have a family? Did you have children?

Hassard: Three. Three children and seven grandchildren.

Chall: Are they all in this area now?

Hassard: Now, yes. One son and two daughters.

Chall: Any lawyers among them?

Hassard: Yes, one of my daughters is a lawyer.

Chall: Where does she practice?

Hassard: She practices in San Leandro. Her husband is also a lawyer, and they live in Oakland, near the Grand Lake Theater. And she's in a firm in San Leandro that specializes in representing cities. I think there are five partners, of which she is one. They're all ex-city attorneys, and my daughter was assistant city attorney in Sacramento for several years after she graduated. They specialize in representing small cities that cannot afford a full-time city attorney, but need one.

Chall: Must be all over the state.

Hassard: They are all over. They represent places like Dublin and Novato and--

Chall: San Ramon--

Hassard: San Ramon, yes.

Chall: All the little towns that have just sprung up.

Hassard: Yes.

Chall: What's her name?

Hassard: Elizabeth Hassard Silver.

Chall: What about your son?

Hassard: He lives over near Danville, way back in the hills. He and his wife are horse breeders. He was in the construction business, but he's been concentrating--they have Arabian horses.

Chall: Well, that sounds exciting--they breed them?

Hassard: Yes.

Chall: There must be people who are therefore buying them.

Hassard: I hope. [laughter]

Chall: It an adventure.

Hassard: Yes.

Chall: And his name is--?

Hassard: James.

Chall: And the other daughter?

Hassard: Kathryn Gaehwiler. Her husband owns a construction company, and he also owns quite a lot of rental units around San Francisco. They live about a half-mile from us.

Chall: Does Kathryn have a profession?

Hassard: She is an accountant.

Chall: So you can even take your grandchildren and your children up to the country--

Hassard: Well, my son has two sons, they're both over twenty-one. My daughter Libby, Elizabeth, has a son and two daughters. They're all teenagers. And my daughter Kathryn has a son and a daughter, the son goes to Reed College in Portland, Oregon, and the daughter is just about to enter college.

Chall: They're all grown up.

Hassard: Yes.

Impact of Career on Family Life

Chall: Well, I had wondered about the impact of your career on your family life and your social life, at least because you were very, very busy as an attorney, and you traveled.

Hassard: I know.

Chall: The traveling to Brazil was in itself quite a trip.

Hassard: I've been married to the same gal for--we're having our sixty-first wedding anniversary a week from Saturday. But there was quite a stress, I would say, for a period of ten or fifteen years when the children were growing up because I was not home enough. She would berate me, and properly so.

Chall: Who berated you?

Hassard: My wife. She said that I was a stranger to my children, and in a way, I guess I was. Yes, I think that's true of anybody who gets deeply involved in their career work, and I'm no exception.

Chall: Well, it was so obvious as I read what you had told Mimi and what you have told me, that there were times when you were in your office until midnight, or you were traveling on the ferry to Sacramento and back at crazy hours, trying to make deadlines, that you just would have had to have been immersed in your career and at home at odd hours.

Hassard: Well, for many years--again, particularly when our children were growing up, my wife would have to prepare dinner twice. Once at a reasonable hour for our three children, and then around nine o'clock or so when I got home for me. [laughs] And she didn't like that, and told me so.

Chall: Oh, she did tell you so?

Hassard: Oh, very definitely. But my workload has dropped off to about 10 percent of what it was thirty or forty years ago.

The Pan-Pacific Exposition, 1915

Chall: One of your colleagues said that you remember the Pan-Pacific Exposition in San Francisco.

Hassard: I have a very, not an in depth memory, to be sure, but my parents lived in San Leandro in 1915, and I can recall on at least--I was five years old--two occasions that we took the big red train, Southern Pacific Interurban, and a ferry boat to the Ferry Building, and then we took a little street car to what is now the Marina, but was the site of the Pan-Pacific Expo.

Chall: That's right.

Hassard: And I can remember some of these big buildings. My most vivid memory is of a little train. It ended up, after the Expo closed, at Fleishhacker Zoo; it was there for years. A little narrow gauge, I forget, tracks maybe about two feet, maybe thirty inches across. A little locomotive which was about, oh, eight or ten feet long, and the driver sat there looking like a giant, and then these little cars. Anybody older than about seven or eight couldn't get into the cars, they were so small. But my parents let me ride on that train.

Chall: Oh, that must have been a real treat.

Hassard: Remains in my memory.

Chall: Yes, you were all by yourself, too. You couldn't even stay with your parents.

Hassard: No, they couldn't get into it.

Chall: What fun that must have been for a five-year-old.

Hassard: It just went around in a circle. Oh, yes, that was.

Many of the buildings were removed to somewhere else, and the tracks and this little train were sent eight or ten miles away to the Fleishhacker Zoo, which is out on the ocean on Sloat Boulevard.

Chall: That was a great memory. I guess the Pan-Pacific Exposition was an exciting fair for just many, many people in the Bay Area.

Hassard: Yes, it was.

Chall: Because so many people do remember it, and of course, a great amount of money, millions of dollars, was spent rehabilitating what was left.

Hassard: Well, when I look at photographs of buildings that some of the foreign countries put up, I am amazed, and the amount of money that the City of San Francisco put into it. It was a different age.

Chall: Yes. And it came relatively soon, a few years in a way after the earthquake, so that I guess it was really an exciting thing for San Francisco.

Hassard: Yes, it was nine years after the earthquake.

Law School: The Preparation of Outlines

Chall: Now then, I understand that you prepared outlines in your law school classes for yourself, which you shared then with your classmates.

Hassard: That's right. I think I've explained that to you before, why I prepared outlines because I couldn't take notes on the right-handed arm rests.

Then when I finished law school and graduated, I simply gave them to friends of mine in the classes behind me.

Chall: I thought perhaps you were sharing with your classmates at the time.

Hassard: No, not at the time.

Chall: Oh, I see. I misunderstood then. So you just handed them over?

Hassard: Yes, I did. Probably a mistake, but I did.

Chall: Didn't think of selling them?

Hassard: Well, Bernie Witkin had already started his bar examination review course, and he sold his summaries that he had made, that started while he was in the law school. So I could have followed in his footsteps. But I didn't have any interest in it. I didn't have any interest in continuing to use them, and I saw no reason why those that wanted to share them shouldn't share them.

Chall: Oh, that was very generous. I'm sure they were good notes, too. One of your colleagues said that you were number one in your law school class, but it seemed to me I recall that you had mentioned somebody else who was number one.

Hassard: No, I was not number one. Maurice Harband was number one. I think I finished up number four, actually.

Chall: Well, it's nice to get some of these myths tied down.

Hassard: Well, the first five of us, there was not much gap. We were pretty darn close. My problem in that respect was in my first semester in law school, Captain Kidd gave me a C in criminal law.

Chall: Oh, he did?

Hassard: Yes, he did. [laughter] He gave me A's thereafter, but he gave me a C my first semester. That one C doomed me.

Chall: How did you feel about that?

Hassard: I didn't like it.

Chall: Did you speak to the Captain about it?

Hassard: No. Never.

Chall: You just had to take it. Did you feel that you had been wrongly graded, incorrectly graded?

Hassard: I don't know. I don't think I felt that; I think I felt I was unhappy that I got a C. But I never got another one, so--.

Chall: Did you get mostly A's then, or were there a combination of A's and B's?

Hassard: Oh, I had a few B's in the second semester of my first year and in my second year. In third year I had all A's.

Chall: Quite a record. I don't think I know, although it's not hard to figure out, how you got the nickname "Hap."

Hassard: [laughs] I've had it ever since I was in grade school.

Chall: Oh, have you? I see. The children understood--

Hassard: Oh, sometime--I know I had it by the time I started high school. I don't know, somewhere when I was around maybe ten or eleven years of age.

Chall: It's just so--it's such a great nickname to go with your name. I remember the first time I heard it was from Peter Grant, who just calmly said, "You should talk to Hap Hassard," and I looked at him [laughing], I thought, "Wait a minute!"

Admiring Wendell Willkie, 1940

Chall: Now, I understand from one of your colleagues that you have a memory of Wendell Willkie when he was running for president on the Republican ticket.

Hassard: Yes. He was the first presidential candidate that I got excited about. I met him only once, and that was--actually, it was shortly after he got defeated. But his concept of one world struck me as absolutely correct and inevitably in time, the world would become one unit. Maybe not one unit politically, but one unit definitely economically. It's beginning to happen.

He was derided for his one world concepts, called a visionary and so forth. But I thought he would be a better president than Franklin Roosevelt who was running for a third term. As a young lawyer, I was also unhappy with the concept of breaking the two-term precedent. Frankly, I didn't think he should run. But that didn't influence me nearly as much as Wendell Willkie's own views of things.

I think he would have won if he hadn't lost his voice about a month before the election. The last month, he could just barely whisper. He lost his voice because he didn't pay any attention to his health, to his physical being.

Chall: It's very hard to campaign, even today with microphones all over the place.

Hassard: Well, you keep talking, talking, talking, talking, gradually your larynx gets tired. After he lost his voice--well, in those days, 1940, obviously it was before television, radio was the only mass means of communication, and if your voice goes sour on you, you can't--you could maybe handle television, but it was nonexistent, so he couldn't use radio. You couldn't understand what he was saying on the radio, because it was just a whisper. So he was just suddenly cut off from the public. But I never have gotten excited about a presidential candidate since.

Politics and Politicians: Democrats and Republicans

Chall: Of any party?

Hassard: On your outline you ask if I have interest in any specific branch of the party, no. In fact, I've been around politicians since my youth. I know many of them obviously because of my activities in Sacramento and in Washington to some extent. I don't like politics.

Chall: What is it about it that you don't like?

Hassard: I don't like bragging about myself, which you have to do. It makes me uncomfortable. And the idea of bashing an opponent, I couldn't do that. If you can't win on your own merit, then you deserve to lose, is the way I feel. And politics doesn't work that way.

Chall: No, it certainly does not.

Hassard: The more I learned about the political life, and I learned a lot about it in Sacramento over the years, the less I liked it. I knew many politicians intimately, and what they had to do and the way they had to think just repelled me.

Chall: Your work in politics then is casting a vote every few years, is that it?

Hassard: That's right.

Chall: Are you ultimately basically a Republican? That is, you look more favorably toward the Republican party candidates than you do to others, or are there other criteria--?

Hassard: Oh, I started out as a Democrat, and in my first presidential election in which I was eligible to vote which was 1932, I voted for Franklin Roosevelt. Then he started to--he tried to pack to Supreme Court, and that was abhorrent to a young lawyer. I turned away from him, and I wasted my vote on Alf [Alfred] Landon in '36, and on Wendell Willkie in '40, and I've voted Republican ever since, simply because of the two major parties, the Republican party by and large has views that I share.

Not always, and particularly--for example, I totally disagree with the Republican party's stance on abortion. I don't think either political party has any business talking about abortion. That's not a political issue. It's a medical issue. So I can't say that I agree with everything the Republicans stand for, but as between the Democrats and the Republicans, particularly since World War II, I prefer the Republicans. There were lots of things I admired about Harry Truman. But in the last half-century, the Democratic party has strayed into just--well, wasting the country's resources.

I have to agree with Ross Perot on one thing: unless we mend our ways, we're passing on to our grandchildren and great-grandchildren a total disaster.

Chall: We'll see what either one of the president hopefuls coming up will do about that.

Hassard: Well, it isn't up to the president as such. He can talk, but he can't do much else. It's up primarily to the type of persons the people vote into Congress. If they continue to vote in the loudest talkers and the people with the biggest campaign contributions, they're going to get what they deserve, which is national bankruptcy.

Chall: Not a very pleasant--

Hassard: Oh, and I have friends who have left Congress for just that reason. The most recent was one that I really don't know, the senator from New Hampshire--

Chall: Yes, I know whom you mean; we'll fill that in. Yes, he felt that he was just wasting his time.

Hassard: Wasting his time, and that the country was going to go bankrupt if Congress didn't mend its ways. He's dead right. [Warren] Rudman, I think it is.

Chall: Yes, it is Rudman. Well, what else would you like to say about the politics of today?

Ross Perot: Longtime Business Contact

Hassard: You have here Ross Perot today. Well, I have very mixed emotions and feelings. I have known Ross for about--oh, since 1969.

Chall: Oh, you have known him?

Hassard: Oh, yes, quite well.

Chall: How did that come about?

Hassard: Business relationships. In 1969, his computer company, Electronic Data Services, entered into a contract with Blue Shield of California to handle its electronic claims processing, at which time it was handling Medicare in northern California, Medi-Cal statewide, along with the two Blue Cross associations, and a volume of Blue Shield, over 200,000 claims a day. It would fill this room. The existing computer people that were available for hire were just not competent to handle it. They couldn't. Perot's firm was about the only place in the United States that we could turn to that could handle it. And that contract is still in existence today.

But I first met Ross in 1969, and then in that year he and I and a couple of people from National Blue Shield spent considerable time in Washington trying to convince the Nixon administration that Medicare part B, which is professional services as distinguished from part A which is hospital, part B should be handled uniformly on a national basis instead of split up amongst forty or fifty different companies.

We failed, but at least I got to know him pretty well then, and after that, I've met him from time to time in connection with the Blue Shield contract. I have not seen Ross in the last say half a dozen years--not since he left General Motors.

Chall: Not since he left General Motors?

Hassard: Yes. Well, he sold EDS to General Motors, and then he was on the board of directors at General Motors in the early 1980s. He totally disagreed with the management of General Motors, which he felt was incompetent, and he was dead right. He felt that they were going to lose out to the Japanese, which they did promptly. But they wouldn't listen to him, and they got annoyed with his squawking, so they offered to buy him out, and they bought him out for around a billion-some-odd. I haven't seen him since then.

The way he's been handling his campaign baffles me.

Chall: Does it not fit--

Hassard: Well, I've watched the three debates, and he looked just like Ross Perot, and he talked just like Ross Perot in his debates. But in the way he comes through in the press, and in the things like quitting the race, and then giving a different reason for quitting the race, and then coming back in--that leaves me confused.

Chall: How do you analyze him as a businessman as you knew him in those days from '69 and later working with Blue Shield and his dealing with the Nixon administration?

Hassard: My experiences with him business-wise have all been favorable. I know people that have dealt with him that have the opposite idea, but mine have all been favorable. I would say that the results speak for themselves: he started with nothing and now he's got $3 billion. Do you think he's a bad businessman?

Chall: He's far-sighted, you think, he has long vision?

Hassard: He's very far-sighted, as far as that. He was way ahead of his field, so to speak, in the development of computer science. See, he used to work for IBM. After he left the navy, he got a job with IBM as a salesman in the fifties. He left IBM in the early sixties to go to work for Blue Cross and Blue Shield of Texas. And then from there, he started his own firm, and Blue Shield of California was his first big out-of-Texas contract.

Chall: So he had a lot of vision about what you could do with computers?

Hassard: He certainly did, compared to his competition.

Chall: So you're baffled by his personality, is that it, by the way he is dealing with his campaign?

Hassard: Well, the way he's been dealing with the campaign baffles me. He obviously of the three comes across better to the public, because there seems to be no question about the reactions of the three debates. Everything that I read said Perot came out on top, all the polls that were taken. I think he's very much electable, if he'd behave himself [laughing].

Chall: And what's driving him the other way. Maybe it's politics?

Hassard: He's not a politician. I think maybe that's the basic trouble. I don't think he had any idea what he was getting into when he decided that he'd run for president of the United States. I don't think he realized that his entire life would be examined under a microscope, his wife's life, his children's lives, and that anything bad that could be twisted into it would be twisted into it. If you knew politics, you'd know that that is basic for the course. I guess he just couldn't take it. But he should have known; he's been around long enough.

Chall: Hard to know.

Hassard: I know I wouldn't be able to take it, so I never started. Because there's no one alive who hasn't done something or other than can be--

Chall: Used against you.

Hassard: Used against you. Unless you've spent all your life locked into a closet somewhere. [laughs]

Chall: Well, it's an interesting background there. I didn't realize that you had known him all these years.

Author: "The Duties and Responsibilities of Blue Shield Trustees" and the Impact

Hassard: Before we move on I wanted to tell you that many, many years ago, I did a little short article on the duties and responsibilities of Blue Shield plan trustees. Normally that's called board of directors, but the term trustees was used in the early days of Blue Shield. There's nothing startling about it; it's really an attempt in plain English to tell people first coming on the board of a Blue Shield plan what their legal duties and responsibilities were. It's been printed and reprinted in thousands and thousands of copies, and it's been given to every new Blue Shield board member throughout the United States ever since. This is--I don't know what edition this is. This is a second edition. It went through one more. You may have it.

Chall: Thank you.

Hassard: And there's nothing particularly scholarly about it. It's just that I thought it would be of some interest. There are seventy-some Blue Shield plans in the United States, and the average board is around fifteen or so.

Chall: These things help. Anything that helps a transition and making people understand what they're doing on the board, any board, is very important, I think. School board or whatever.

Hassard: Well, that has been picked up--there's one other, and then I'll quit. I thought this would--where is it now? [looking through papers] Oh, here it is. The attorney for Blue Shield of Madison, Wisconsin, a lawyer named Murphy, happened to also be the attorney for the Wisconsin Historical Society, so he asked me if it would be all right if he had the historical society adopt that statement and give it to all board members of historical societies. So then they had it printed--this was in 1962--the same thing that I just gave you--where in the heck is it now in here--[looking through papers] here it is. It's printed in the History News that goes to all of the various historical societies. It's just that thing that I just gave you word for word, except instead of Blue Shield, it's historical society trustees.

Chall: Isn't that interesting. It just shows how important it is for people to understand their role as board members, regardless of what kind of board it is.

Hassard: But as a result of those things, and the medical economics book, and other little things that have been picked up, I was probably better known by name amongst physicians and other groups in say Ohio than in California. [laughter] Or any other state. It has its benefits and it has its drawbacks. One drawback was when I wanted leisure time when traveling, I couldn't travel incognito anywhere in the United States.

Chall: Is that so? All they had to know was Howard Hassard, and--

Hassard: My face was--

Chall: Oh, all over.

Hassard: All over the medical economics about every second or third issue.

Legal Responsibilities of Historical Society Trustees

By Howard Hassard

(Editor's note: Trustees have many responsibilities. In their hands rests the authority to formulate the basic policies that govern historical agencies. In carrying forward the work of the organizations over which they preside, they have diverse legal responsibilities. What these are and how they affect trustees has been ably summarized by San Francisco attorney Howard Hassard, specialist in this field of law. His paper was presented at the American Association for State and Local History's annual meeting in San Francisco on September 1, 1961.)

Historical societies have long been an important link in the preservation of our regional and national American heritage. Initially, such groups were often founded to collect and discuss papers, letters and objects related to some important phase in the life of a community or state. Through the years, these societies have expanded their sphere of operations to include such varied endeavors as the preservation, marking and restoration of important historical sites, the publishing of books and pamphlets, and the operation of museums. With this expansion in the scope of activities came the need for a more defined, permanent form of organization for a type of internal structure that could function, independently of fluctuations of membership and of the life spans of the members. Hence the movement towards incorporation, and other related forms of organization.

However, in return for the advantages of such a form of organization, there is placed a higher degree of law imposed responsibility upon those who have been delegated the task of directing the activities of historical societies.

Historical societies or museums may or may not be incorporated. If incorporated, it is assumed by me that they are incorporated as non-profit corporations. If not legally incorporated, they are in law associations. In either event, the same rules of law govern the activities of society trustees or directors.

A corporation is an artificial concept. While all corporations are composed of persons, the corporation itself is considered in law as having a separate legal existence and "it" is capable of suing and being sued, making contracts and engaging in business transactions generally.

In a corporation, the shareholders—in the case of a stock company, and the members—in the case of a non-profit membership corporation, are "the people"; they are the ultimate owners; but the government and management of the affairs of the corporation is conducted by their elected representatives, i.e., the board of directors or board of trustees (for convenience I will use the term trustees, although the obligations of the governing board of a corporation are the same regardless of the *title* used to identify it, e.g., directors, trustees, commissioners, etc.)

Generally speaking, the board of trustees is the legislative body of the corporation, and the executive functions are carried out by the president and other officers. In a corporation the officers are elected by the board of trustees, rather than directly by the shareholders or members.

Under corporation law, all powers of management are vested in the board of trustees, except those powers expressly reserved to the shareholders or members. These reserved powers *in general* are:

a) The power to elect and, under certain circumstances, to remove the trustees,

b) The power to amend or modify the corporate charter or by-laws (this, however, varies—in some states the trustees may amend by-laws),

c) The right to approve or disapprove any sale of all or substantially all of the corporate assets or any proposal to merge or consolidate with another corporation, and

d) The power to dissolve and liquidate.

These reserved powers, as you will note, relate primarily to fundamental changes in the corporate structure and to the election of managers, i.e. trustees.

All other corporate powers are lodged in the governing board. These powers include management of the corporate business, elections and removal of officers, and, determination of dues, determination of investment of current funds, and in general all of the policy decisions that must be made. The officers of the corporation must execute policies as determined by the board, but the power to *make* policy is solely vested in the board of trustees.

The board of trustees may *delegate* to officers and employees various management duties, but, as will be pointed out later, such delegation does not transfer power or relieve responsibility.

Power to govern carries with it certain duties. In general, these are:

First of all is the duty to be honest, and to place the welfare of the organization above ones self-interest. Thus it is a legal wrong for a trustee personally to profit out of any business transaction between the society and the trustee or some organization in which the trustee is fianancially interested. This duty has been expressed in a number of ways by different courts. Perhaps the following is as concise and accurate a statement as any:

> "Directors (or trustees) occupy a fiduciary relationship to the corporation and its members and indirectly to its creditors. Hence, it is their duty to promote the interests of the members and the corporation. They must maintain that prudent, honest observance of the limits on their corporate powers which attaches to a fiduciary relationship, and they may not make any use of their power or of the corporate property to secure for themselves an advantage not common to all members."

A fiduciary relation in law is comparable to a personal *confidential* relation. In substance, it has the same legal implication as the relation of physician and patient, or attorney and client.

This rule does not prohibit all transactions between a trustee and the corporation. While the law on this point is complex, it may be generalized as follows: If a trustee has a personal interest in a contemplated contract or other contemplated activity of the corporation, and he makes full disclosure to his fellow trustees of his personal interest, abstains from voting on the proposed contract or other transactions, and meticulously avoids exertion of *influence* on his fellow trustees or the officers, he has acted in good faith and with integrity and has not violated the law. Even then, if the transaction is unfair to the corporation, a court may later set it aside.

The details of this obligation to exercise fiduciary care are innumerable and it is possible to give only a limited number of illustrations. When court decisions are examined, however, they warrant the conclusion that trustees must conduct themselves in affairs as alert, effective, and aggressive businessmen to the end of protecting and promoting the financial and other welfare of their society. In a way trustees are like holders of public office. If they fail to comply with the formalities, their acts may be held invalid and transactions entered into upon their instructions declared null and void. They *may* be held personally liable for loss caused by their actions.

A trustee may not abdicate his duties or responsibilities. While the functions of management are to a large extent necessarily delegated by the trustees to the officers of the corporation, and to committees and executive personnel, the trustees may *not* abdicate their supervision or other duties by vesting in such officers or employees the exclusive control of the business. The trustee's obligation is to *function*, and to *function in person*. He cannot properly remain inactive. He *must* attend the meetings. He *must* participate in the consideration of matters within the province of the board of trustees, and give them his attention, efforts and judgment. He *must* assume his full share of the responsibility for the decisions taken by the board. He *cannot* delegate to another his duty to vote. He cannot give a proxy.

A contract by the trustees delegating complete management powers to an officer does not relieve the trustees of responsibility for mis-management or wrongful use of the corporate property or other misconduct. The power of the trustees to delegate authority is restricted to matters involved in the ordinary course of the corporate business. Even if the trustees purported to delegate to a committee or an officer authority to do any act which they themselves might legally perform, this would be construed not to extend to matters of an extraordinary nature nor to the authorization of fundamental changes, nor would it relieve the trustees of their ultimate responsibility for corporate management. Again, the possession of power to control and to govern carries with it, willy-nilly, the duty and responsibility to exercise such power in good faith and with at least ordinary precaution.

I have just mentioned "ordinary precaution." Generally it may be said that if a corporation is mismanaged, and such mismanagement is directly traceable to negligence on the part of the trustees, then the trustees are legally responsible for the results of the mismanagement.

However, since the law does not expect trustees to devote full time to their positions, and since the law contemplates that the active day-to-day operations of a corporation will be conducted and controlled by the officers, it is quite difficult to draw a clear line between corporate adversities which are not the legal responsibility of the trustees, and outright mismanagement or misconduct which is directly traceable to trustee negligence and for which the trustees are legally responsible.

Perhaps an example may be helpful in acquiring an understanding of this area of trustee responsibility.

If the trustees should invest all of the funds of the corporation in highly speculative ventures—such as a search for uranium—and all of the funds were thereby lost, the law would unquestionably hold them accountable for the lost funds, on the ground that the use of funds for speculative purposes is wholly beyond the purposes for which it was created, and a reckless disregard of the rights of members to the extent of outright misconduct.

On the other hand, the employment by trustees of an officer who turns out to have poor judgment and to be guilty of errors, or even embezzlement, is not in and of itself actionable misconduct or mismanagement, *unless* the trustees knew, or by ordinary inquiry could have known, in advance that the officer had a prior record of dishonesty or incompetence.

Trustees must use reasonable care to ascertain from time to time the true financial condition of the corporation. They may rely in good faith on reports, certified as correct, by independent certified public accountants selected with reasonable care. However, in the absence of periodic independent audits they may be liable for corporate losses.

The trustees are liable for outright unlawful acts. For example, if either state law or the corporate charter or by-laws restricts investment of corporate funds to certain types of security—such as government bonds or corporate bonds—and the trustees wilfully disregard the statute or charter or by-law provision and invest in that which is unauthorized, they are liable for any loss resulting therefrom.

This liability, i.e., the liability for unauthorized investments or unauthorized dissipation of corporate funds, is in most states limited to instances in which the trustees acted wilfully or negligently. An inadvertent over-payment or unauthorized investment not shown to have resulted from carelessness or intention, would not impose personal liability on the trustees.

A trustee is legally liable in the event that he converts funds of the corporation to his own use; this, in effect, being a theft of corporate funds. In addition, a trustee may be legally liable if in his capacity as trustee he participates in a conversion of funds belonging to a third party but in the hands of the corporation.

Generally speaking, a trustee may serve on the board of directors of a corporation that is engaged in a similar line of activity.

However, the law does not permit the trustee of a corporation to engage in or assist a *competing* business to the detriment of the corporation. The rule has been stated as follows:

> "A trustee or director may in good faith engage ing business which is of such a nature as to intion, but he cannot lawfully enter into a competing business which is of such a nature as to injure the corporation, nor can he divert to himself business which should properly belong to the corporation * * *."

Since a trustee is in a fiduciary capacity, and owes to the corporation for which he is trustee the duty to act in good faith and loyally to serve its interests, it necessarily follows that he cannot at the same time engage in direct competition in such a manner as to injure the organization to whom he owes loyalty.

Trustees cannot vote themselves fees or salaries. It has been held that a resolution of a board of trustees voting compensation to the members of the board for their services is void. This does not mean that trustees cannot be compensated; it does mean that determination of their compensation must be made by the voting membership, not by themselves.

Also, the rule against trustees voting to pay themselves compensation does not prohibit trustees serving the corporation for pay in another capacity (e.g., officer, employee, professional advisor, etc.) or being reimbursed for actual expenses incurred in performing their trust duties—such as travel expense, etc.

It is unlawful for a trustee to borrow money from the corporation. In some states by statute, loans to corporate directors or officers may be authorized by vote or written consent of a majority of the members entitled to vote. In such states, loans so authorized are lawful; in the absence, however, of such permissive legislation trustees may not borrow from the corporation.

In addition, a trustee may not purchase assets or properties from the corporation except with the vote or written assent of a majority of the voting members, and even then such transactions are closely scrutinized by the courts.

Regardless of particular permissive statutes, it is not good practice for a member of the board of trustees of a corporation to borrow money or to purchase property from the corporation which he serves.

Generally speaking, trustees have no personal liability for the debts of the corporation. However, there are exceptions to this rule. In many states by statute, trustees may incur personal liability for corporate debts if they are guilty of certain official neglects or misconduct. In some states the failure of a corporation to file or publish reports as required by law results in the trustees or directors of the corporation becoming personally liable for the debts of the corporation.

Likewise, in many states by statute, the publishing of a false report of the financial condition of the corporation imposes personal liability on the trustees of the corporate debts. Usually this is limited to such false reports as are knowingly published.

The foregoing lists many of the legal duties and responsibilities of corporate trustees. You will observe that the primary duty of each corporate trustee is to exercise good faith in all relationships with the corporation, and to use ordinary prudence and care in carrying out his stewardship. Not all adversities that the corporation may encounter can be considered a breach of duties by the trustees; the law does not require of trustees that they so manage the corporate business that it necessarily prospers. On the other hand, if corporate losses result from dishonesty by the trustees, or preference of self-interest over corporate interest, or abdication by the trustees of their responsibilities, or careless conduct of their duties amounting to mismanagement, then a breach of legal duty may exist and personal liability may follow.

In summation, one may say that the major requirement imposed upon directors and trustees is that they exercise reasonable diligence and care. If a director does so, he will be free from personal liability when his poor judgment has caused an injury to the corporation. It is *good faith* that is the major test of the care and diligence of a director.

Professor Oleck, author of "Non-Profit Corporations and Associations—Organization, Management and Dissolution"* lists the following "Points to Remember" for directors or trustees of non-profit corporations or associations:

Routine affairs are for the board of directors to decide.

Extraordinary affairs are for the members to decide.

Fundamental changes in policy or purposes must be approved by the general membership.

An honest director who uses reasonable care and diligence has no personal liability for corporate debts or obligations.

Directors guilty of fraud or bad faith are personally, jointly and severally liable.

Insist on written record of objections to doubtful decisions or acts.

Be sure to prepare and file at least an annual report on the organization's finances and affairs.

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* Howard L. Oleck, *Non-profit Corporations and Associations: Organization, Management, and Dissolution* (New Jersey, 1956), 284.

Chall: It's like you were a politician or a movie star.

Hassard: Yes. It's one of the reasons I wouldn't want to be either. [laughs]

Traveling Abroad: Europe and Japan

Chall: Now, you have traveled around the United States and abroad. I think you mentioned looking into your family tree somewhere.

Hassard: In England, and my wife's also. Her maiden name was Jones, which is of course Welsh, and her mother's maiden name was Cushing. One of the Cushings came over on the Mayflower.

Chall: So you've been tracing--

Hassard: Well, we've traced the Cushings in England. Their origin area is just to the west of Norwich in Norfolk.

Chall: Do you like traveling abroad?

Hassard: Well, sometimes. We've gone to England at least six or seven times, and I enjoy England very much, because again my roots are there. I like Portugal and Spain. We've gone there two or three times. We've traveled in northern Europe, which is very attractive, nice. I don't like France. We've only been in Germany once, and that was for a very short time. I don't have much of a reaction there.

My wife spent her formative years in Japan and China. Her father, who died of cholera in Peking, worked for the Pacific Mail Steamship Company. They lived in Kobe in Japan from the time she was six until she was about eight, and then they moved to China and they lived in Shanghai for a couple of years when her father died. But she had expressed a desire over a period of time to go back to Kobe to her childhood and see where she started school. So a few years back, we took a trip to Japan. I found Japan a fascinating place.

Chall: Did she find her home?

Hassard: Oh, yes. We couldn't find the exact house, but we found the neighborhood and found the park where she walked and went to school.

Chall: So that was an interesting experience.

Hassard: We found where her father's office was down on the waterfront.

Japan scares me.

Chall: As a country, as a society, or as an economic--?

Hassard: Yes. All the way around. First of all, it is just completely homogenous. Everybody looks alike, because everybody is exactly of the same roots. They all have the same color of eyes. There are no blue eyes and brown eyes; every damn one of them has got brown eyes. Their facial structures are exactly the same. They're so different from us--

Chall: You don't see the diversity.

Hassard: They have no diversity, and they don't want any. They're very cordial to the casual tourist, like my wife and I were, but foreigners of any kind that stay there very long, they resent. Because they have no diversity, they're extremely regimented and love it. They're regimented by choice. They do everything, take their vacations in regiments. You never see a single Jap tourist, you always see about five hundred of them--seems like five hundred.

They're extremely industrious, and their average IQ is much higher than I think probably anywhere else in the world. And they're ambitious. So like the Germans in Europe, the Japanese in Asia are going to be dominant. As long as their dominance is peaceful, that's fine, but you never know.

We also visited the Philippines while we were there, and Hong Kong. You can have Hong Kong. [laughs] Terrible place. Most Americans that go there love it, because there's good shopping. But they must have blindfolds on, don't look around to see the squalor and the overcrowding, misery.

Chall: And you saw that, even though you were probably staying in one of these fine highrise--

Hassard: We were, we were staying in [laughs] what the heck is it called? There's one here in San Francisco. It's up on the top of one of the new buildings. The Mandarin. We were staying in the Mandarin.

Chall: But you haven't been to Shanghai?

Hassard: No. We took our trip in the late 1970s, and China was not open then. It would have been an awful hassle to go into China.

Traveling in the United States: Looking at Colleges

Chall: And have you traveled around the United States?

Hassard: Oh, yes.

Chall: On non-business trips?

Hassard: At least we did take our children on several trips across the country, by train and by automobile, over a period of ten or twelve years. Every time I bought a new car, I'd pick it up in Michigan, and we'd go there, then we'd take our couple of weeks or three weeks and go around the United States.

Chall: When you say go around the United States, where would you go?

Hassard: Well, each trip we took a different route. One of the things that I was attempting to do with my children--there's only three and a half years between the oldest and the youngest--was to visit college campuses when they were in high school. My oldest daughter did go to Northwestern, and graduated there. My youngest daughter went to the University of Pennsylvania for one year; she did well academically, but she fell in love with a bum. [laughter]

Chall: And she came right home.

Hassard: Well, my wife dragged her home. And my son showed no interest whatsoever in any of them.

Chall: Did he not go to college?

Hassard: He did for a couple of years.

Chall: Where did your University of Pennsylvania daughter end up?

Hassard: Well, she ended up finishing school at Berkeley. She went to Santa Barbara for one year, but she didn't like that, and then she came back and finished up at Berkeley. And then she married, and she and her husband moved to Arkansas. Then they divorced, and after they divorced, she went back to the University of Arkansas and took postgraduate work in accounting, and got her CPA.

Chall: Good for her. Has she remarried?

Hassard: Yes. [laughs] She's--wild extremes: her first husband was impecunious. Any time he made a dollar, it burned a hole in his pocket, and he spent it. So they were always broke. Her present husband is a multi-millionaire.

Chall: Oh, I see. He knows how to handle money, I guess. That's interesting. Does she do the accounting for him, or is she out on her own?

Hassard: No, she does accounting for him.

Summing Up: A Life Well Lived

Chall: Well, now, what do you want to say in terms of summing up?

Hassard: What is there to say?

Chall: You're still working.

Hassard: Oh, I'd only be kidding myself if I said I was working very much. I'm not. If I didn't come here, I wouldn't be missed, I'm sure. From the point of view of work. In fact, I am probably going to go on the inactive list of the State Bar next year because I'll be damned if I want to go take lessons in these continuing legal education courses that I used to teach. [laughs]

Teaching Law School Classes

Chall: Oh, you did? You taught continuing education classes?

Hassard: Oh, way years and years ago, yes I did. And I also taught at the San Francisco Law School for a few years, way back when I was young. I taught at Boalt Hall for one year.

Chall: What--?

Hassard: I was just replacing an instructor that was on a sabbatical.

Chall: Did you like teaching?

Hassard: I liked it very much, but I wouldn't have liked to do it full time. It would become--well, this happens in medicine, too. You're doing the same thing over and over and over again, and I would get bored.

Chall: I see. Yes, you said that about being a judge, too.

Hassard: Oh, being a judge would be awful.

Chall: So you like to have things that are stimulating and different, some variation?

Hassard: Yes. I like to have variation, I have to have something new to tackle. I don't like the idea of just repeating over and over and over the same thing. Teaching, aside from that, if you don't teach too long, and if it isn't your sole occupation, can be a lot of fun. I enjoyed teaching at San Francisco Law School. It's an evening law school. The students are quite different than students say at Berkeley. At San Francisco Law School you can assess in a class--I used to--most of the classes I taught, I could figure that about half of them had talent and were going to make it, and the other half just didn't have a chance. The classes might have helped them in getting in to some other activity, but they were not going to make good--be lawyers.

It's quite a different mix in the evening than you get in a regular law school. But I enjoyed teaching. It was interesting to keep abreast of a certain phase of the law. I don't know why the guy that owned the school bounced me around. I first taught security law--mortgages, deeds of trust, suretyship and that sort of stuff--and then he switched me to teaching evidence. I had to learn--that I enjoyed, because I had to learn a whole new subject.

Chall: Because you hadn't been doing that.

Hassard: No.

Chall: Where were you teaching these various classes?

Hassard: At San Francisco Law School, which is a night school. It's not the University of San Francisco. San Francisco Law School still exists. It's been here--well, Pat Brown was a graduate of San Francisco Law School. It's a night school, four-year course instead of three years. Their classes run from seven to ten each evening, five days a week. It draws a varied--quite a mix of people. They have to be very ambitious to be willing to go through that grind. We've had secretaries here that have gone to San Francisco Law School, or to Golden Gate, which is the other one which is around the corner here.

Golden Gate is also a night law school. It started off life as the YMCA school, and it changed its name to Golden Gate.

Chall: What did you teach for the Bar continuing education courses?

Hassard: Oh, various things. Continuing Legal Education for the bar courses are put on really by the University of California Extension. They basically cover every subject of the law that there is. That I did from time to time in the thirties and forties.

Chall: When you were still just getting--

Hassard: When I wasn't too darn busy, that's right.

Chall: Well, on the whole, you look back and feel that you had an interesting life and career here in San Francisco, and in what Hartley Peart's firm has become?

It's Been A Great Career: Let Others Judge the Impact

Hassard: Well, I can say that I'm one of the lucky people who liked going to work, getting up in the morning. I enjoyed practicing law. I found it stimulating. So from that point of view, I consider myself very lucky. Now, as to accomplishments, that's for others to judge.

Chall: All right, we'll let them.

Hassard: [laughs] I'm not like my friend Mel Belli; I don't like to see my name in the paper, and I don't like to blow my own horn.

Chall: Well, that's what all your colleagues have said, that you're very diffident about your own life and your own abilities, so somebody else will have to write about that.

Hassard: That's okay.

Chall: It's really been a pleasure working with you. Thank you very much.

Hassard: Okay.

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Malca Chall

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Active in community affairs as director and past president of the League of Women Voters of the Hayward area specializing in state and local government; on county-wide committees in the field of mental health; on election campaign committees for school tax and bond measures, and candidates for school board and state legislature.

Employed in 1967 by the Regional Oral History Office interviewing in fields of agriculture and water resources. Also director, Suffragists Project, California Women Political Leaders Project, Land-Use Planning Project, and the Kaiser Permanente Medical Care Program Project.

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